

**EXHIBIT B-2**

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<p>1                    FUERMAN</p> <p>2 action, and they keep track of their customers</p> <p>3 who have -- who own stock. So they send me</p> <p>4 the notice, so technically I'm a member of</p> <p>5 that plaintiff class when that happens. I</p> <p>6 think they sent me one for 3 COM, for example.</p> <p>7                    Q. Have you ever served as a class</p> <p>8 plaintiff?</p> <p>9                    A. No.</p> <p>10                  Q. Do you consider yourself an expert</p> <p>11 on shareholder behavior?</p> <p>12                  A. No.</p> <p>13                  Q. Do you consider yourself an expert</p> <p>14 on the public savings and loan market or the</p> <p>15 market for publicly held savings and loans in</p> <p>16 the time frame 1999 to 2000?</p> <p>17                  MR. BRAUTIGAM: Objection.</p> <p>18                  A. No, in the sense of I don't know the</p> <p>19 I had idiosyncrasies of that market.</p> <p>20                  Q. Do you consider yourself an expert</p> <p>21 on calculating damages in connection with</p> <p>22 securities actions or other litigation cases?</p> <p>23                  A. No, I do not. In fact, one of my</p> <p>24 papers I co-authored with professor</p> <p>25 Steve Freund who has the knowledge to do that.</p>	Page 94	<p>1                    FUERMAN</p> <p>2 discuss it further to see whether I had the</p> <p>3 proper qualifications and whether I was</p> <p>4 interested.</p> <p>5                    So we had several conversations. I</p> <p>6 sent him various documents in the fall of</p> <p>7 2003.</p> <p>8                    Q. You've also today provided sort of a</p> <p>9 summary of your time sheets?</p> <p>10                  A. That is correct.</p> <p>11                  Q. If you need to look at this feel</p> <p>12 free. I'm just trying to get an estimate from</p> <p>13 you for how much time you've devoted to the</p> <p>14 engagement?</p> <p>15                  A. I could total up these numbers with</p> <p>16 my calculator, but that seems kind of like a</p> <p>17 waste of time.</p> <p>18                  Q. I'm looking for rough order of</p> <p>19 magnitude.</p> <p>20                  A. All right. I'm simply counting</p> <p>21 these numbers. I count 185 hours.</p> <p>22                  Q. I know that's an approximation.</p> <p>23                  A. Yeah, it's all there in black and</p> <p>24 white. If I made a mathematical error that's</p> <p>25 possible.</p>	Page 96
<p>1                    FUERMAN</p> <p>2 He did that in part of my paper, my paper</p> <p>3 included that. He did that because he has</p> <p>4 that knowledge.</p> <p>5                    Q. Which paper of the ones you've</p> <p>6 listed?</p> <p>7                    A. That's the third one down called</p> <p>8 "Fraudulent Audited Annual Financial</p> <p>9 Statements."</p> <p>10                  Q. Third one down on what page?</p> <p>11                  A. Third one down on the first page,</p> <p>12 third article listed.</p> <p>13                  Q. Thank you. When were you retained</p> <p>14 in this case?</p> <p>15                  A. It was in the fall of 2003. Yeah,</p> <p>16 had to have been the fall of 2003.</p> <p>17                  Q. 2003 or 2002?</p> <p>18                  A. 2003. It was fairly recent.</p> <p>19                  Q. Tell me how your engagement came</p> <p>20 about?</p> <p>21                  A. I got a cell phone call from</p> <p>22 Mike Brautigam. I returned it and he</p> <p>23 explained why he was calling. He wanted to</p> <p>24 discuss with me the possibility of being an</p> <p>25 expert witness in this case, but we needed to</p>	Page 95	<p>1                    FUERMAN</p> <p>2                    Q. That's fine. How much have you been</p> <p>3 paid to date?</p> <p>4                    A. About \$27,000.</p> <p>5                    Q. What was the nature of the tasks as</p> <p>6 was explained to you by Mr. Brautigam?</p> <p>7                    A. The nature of the task -- I cannot</p> <p>8 remember exactly what was discussed in the</p> <p>9 first few phone calls. The tasks varied. At</p> <p>10 first the task was to familiarize myself with</p> <p>11 the case sufficiently so that I could decide</p> <p>12 whether I felt that it was appropriate that I</p> <p>13 be an expert witness.</p> <p>14                    And he was doing the same for</p> <p>15 himself, judging my knowledge and credentials</p> <p>16 and seeing whether from his point of view it</p> <p>17 would be appropriate. So some time was spent</p> <p>18 on that, and then we both concluded that it</p> <p>19 would be appropriate.</p> <p>20                    Then I began to just read massive</p> <p>21 amounts of litigation documents. The case has</p> <p>22 been going on since 2001. I think it's been</p> <p>23 going on that long.</p> <p>24                    Q. Before that, but that's close</p> <p>25 enough.</p>	Page 97

<p>1                   <b>FUERMAN</b></p> <p>2       A. No, you are right. I think I read 3 somewhere it actually started with a pleading 4 requesting an injunction prior to the merger 5 closing or something. So it's been going on 6 for quite a while.</p> <p>7       So a fair amount of time was spent 8 on reading a fair number of these documents. 9 I saw on the PACER docket sheet that there are 10 400 docket entries. So I hesitate to say that 11 I am familiar with all aspects of such a huge 12 case, but to the extent feasible I did just 13 that.</p> <p>14     I tried to familiarize myself with 15 the case by reading documents filed by the 16 parties, as well as a couple judicial opinions 17 that have been put on Lexus Nexus. Then I 18 began to write the expert opinion. I think I 19 gave you a copy of the first draft that was 20 completed in December and then the final draft 21 was filed with the court January 22, 2004.</p> <p>22     I spent a lot of time doing 23 research. First of all, I did initial 24 research to determine, yes, I did feel 25 comfortable that I am an expert for purposes</p>	<p>1                   <b>FUERMAN</b></p> <p>2       Q. Professor Fuerman, let me show you a 3 document which has been marked as Fuerman 4 Deposition Exhibit 2. This is entitled 5 "Exhibit 3 Accounting Expert 6 Report-Materiality."</p> <p>7       In your prior testimony you were 8 talking about something you prepared in 9 January of '04. Is this the document?</p> <p>10     A. Right. I gave you an early draft, I 11 think December the 3, 2003 or something along 12 those lines. I believe this was filed with 13 the court January 2, 2004.</p> <p>14     Q. In this document it was not signed 15 or dated. Do you know why that was?</p> <p>16     A. No, I do not know.</p> <p>17     Q. You talked about being asked to 18 provide assistance in connection with 19 depositions. Do you recall which depositions?</p> <p>20     A. One of them is the Joseph Stager 21 deposition, and I gave you a copy of a memo 22 that I wrote to Mike, my thoughts on that 23 deposition.</p> <p>24     Q. Did you meet personally with 25 Mr. Brautigam over the course of your duties?</p>
<p>1                   <b>FUERMAN</b></p> <p>2 of what I'm being asked to testify on. But 3 then I read everything I could get my hands on 4 that would shed light on the matters in 5 controversy regarding materiality and 6 restatements and the nexus between them.</p> <p>7     Q. You indicated that from time to time 8 the tasks changed or shifted a little bit?</p> <p>9     A. That is correct.</p> <p>10     Q. Can you explain that?</p> <p>11     A. At one point the task was mainly to 12 write that initial expert report or expert 13 opinion, however you wish to phrase it, that 14 was filed January 22, 2004. There were other 15 times when I was asked to assist counsel for 16 the plaintiffs in writing up a pleading, 17 something that might get incorporated in a 18 pleading and other times my view on a 19 deposition transcript or my view on an 20 upcoming deposition or something like that.</p> <p>21     MR. BURKE: Off the record for one 22 second.</p> <p>23     (Discussion off the record.)</p> <p>24     (Fuerman Exhibit 2, document, marked 25 for identification, as of this date.)</p>	<p>1                   <b>FUERMAN</b></p> <p>2       A. Last night was the first time.</p> <p>3       Q. Most of your dealings were 4 correspondence?</p> <p>5       A. By telephone, correspondence, fax.</p> <p>6       Q. In connection with your duties, did 7 you meet with anyone else associated with the 8 case personally?</p> <p>9       A. No. I do not know the parties 10 involved, other than Dr. Stager. He was the 11 president of the university when I was going 12 through the Ph.D. program at Cincinnati.</p> <p>13     Q. Do you know him personally?</p> <p>14     A. I do not even know what he looks 15 like.</p> <p>16     Q. You just know of him?</p> <p>17     A. That is correct.</p> <p>18     Q. Did you ever meet Mr. Mesh?</p> <p>19     A. No, I have not met Mr. Mesh.</p> <p>20     Q. Prior to this case have you ever 21 done any work for Mr. Mesh of the Mesh firm?</p> <p>22     A. No, I have not.</p> <p>23     Q. Prior to this case have you ever 24 done any work for Mr. Brautigam of any kind?</p> <p>25     A. No, I have not.</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1                   <b>FUERMAN</b></p> <p>2   Q. Did Mr. Brautigam tell you how he</p> <p>3   came to learn of you?</p> <p>4   A. He saw my article in Business Week.</p> <p>5   Q. That's the one you gave me earlier</p> <p>6   today about auditing the auditors?</p> <p>7   A. Yes.</p> <p>8   Q. Was there any analysis that you</p> <p>9   performed for purposes of your expert report</p> <p>10   that's not included in the three reports that</p> <p>11   you have submitted?</p> <p>12   A. No.</p> <p>13   Q. Is there any work that you were</p> <p>14   asked to do that you did not do?</p> <p>15   A. No.</p> <p>16   Q. Mr. Brautigam is pointing you</p> <p>17   towards something?</p> <p>18   A. I'm sorry, I'm contradicting myself.</p> <p>19   I have prepared one thing here and I brought</p> <p>20   this to the deposition. I showed this to you</p> <p>21   perhaps two hours ago.</p> <p>22   Q. Right.</p> <p>23   A. It's just two pages long. I</p> <p>24   prepared this especially for the deposition</p> <p>25   because I anticipated it would be something</p>	<p style="text-align: right;">Page 104</p> <p>1                   <b>FUERMAN</b></p> <p>2   I thought this is a little bit complicated, a</p> <p>3   little bit technical and I need to create</p> <p>4   something to be able to demonstrate this in</p> <p>5   the deposition.</p> <p>6   Q. We will get into that later and</p> <p>7   we'll talk about that at that point in time.</p> <p>8   Is this project still ongoing?</p> <p>9   A. This, oh, it was done in an</p> <p>10   afternoon, that's all.</p> <p>11   Q. It's not reflected in your report,</p> <p>12   but this work is done?</p> <p>13   A. Right. This is in reaction to my</p> <p>14   receipt of the Prowse report, which I received</p> <p>15   sometime after I completed my report.</p> <p>16   Q. And this deals with future earnings,</p> <p>17   is that correct, projected future earnings?</p> <p>18   A. Is it Dr. Prowse or Mr. Prowse?</p> <p>19   Q. It's doctor.</p> <p>20   A. Dr. Prowse asserts that I made an</p> <p>21   error, that I used the wrong earnings per</p> <p>22   share numbers in one part of my expert report.</p> <p>23   He feels that I should have used, so far as</p> <p>24   earnings per share reported for 1998, I should</p> <p>25   have used \$2.56. I believe Mr. Prowse is</p>
<p style="text-align: right;">Page 103</p> <p>1                   <b>FUERMAN</b></p> <p>2   that would be discussed.</p> <p>3   <b>MR. BRAUTIGAM:</b> Can we mark this as</p> <p>4   an exhibit.</p> <p>5   <b>MR. BURKE:</b> Sure. Let's make this</p> <p>6   Fuerman Deposition Exhibit 3.</p> <p>7   (Fuerman Exhibit 3, document, marked</p> <p>8   for identification, as of this date.)</p> <p>9   Q. Tell me if you would,</p> <p>10   Professor Fuerman, what Fuerman Deposition</p> <p>11   Exhibit 3 is?</p> <p>12   <b>MR. BURKE:</b> For the record, this is</p> <p>13   two pages. The first page is a page</p> <p>14   selected from 75 or an excerpt from page</p> <p>15   75 of the PFGI 10K, filed March 29, 2000.</p> <p>16   Q. The second page is a document you</p> <p>17   prepared yourself?</p> <p>18   A. It is a document I prepared myself.</p> <p>19   I prepared this because I assumed that I would</p> <p>20   be asked questions about the Prowse report,</p> <p>21   another expert witness in this case. I have a</p> <p>22   response to Expert Witness Prowse's assertion</p> <p>23   that I made an error in my analysis.</p> <p>24   I believe that Mr. Prowse is the one</p> <p>25   who made an error, and I thought about it and</p>	<p style="text-align: right;">Page 105</p> <p>1                   <b>FUERMAN</b></p> <p>2   incorrect.</p> <p>3   I used the correct \$2.48. I can get</p> <p>4   into explaining that when we get to the Prowse</p> <p>5   report.</p> <p>6   Q. That's fine. We'll talk about that.</p> <p>7   I understand also that you are going to be</p> <p>8   reviewing depositions as we move forward?</p> <p>9   A. That's correct.</p> <p>10   Q. Other than reviewing depositions or</p> <p>11   other documents created as we move forward,</p> <p>12   are you performing any other analytical work</p> <p>13   in connection with your expert testimony?</p> <p>14   A. No, but you could regard what I did</p> <p>15   here as sort of an antilytic work. Something</p> <p>16   at a deposition may strike me as requiring</p> <p>17   some kind of antilytic response on my part,</p> <p>18   but unless that happens, no, there would be no</p> <p>19   further antilytic work.</p> <p>20   Q. I understand there may be things</p> <p>21   that come up. I understand Fuerman Deposition</p> <p>22   Exhibit 3. Other than that there's no</p> <p>23   projects that you are working on currently?</p> <p>24   A. No.</p> <p>25   Q. How many, if any, individuals</p>

<p style="text-align: right;">Page 106</p> <p>1                   <b>FUERMAN</b></p> <p>2 assisted you in this project, in connection</p> <p>3 with your expert report?</p> <p>4           A. The only assistance I got was from</p> <p>5 my graduate assistant, who helped me gather</p> <p>6 copies of articles that were cited in my</p> <p>7 reports, that I gave you a copy of first thing</p> <p>8 this morning. No substantive work has been</p> <p>9 done on this by anybody other than me.</p> <p>10         Q. I take it you never prepared an</p> <p>11 expert report prior to this case?</p> <p>12         A. That is correct. And that may</p> <p>13 explain why the initial one that I wrote in</p> <p>14 December 2003 and filed in January 2004 may</p> <p>15 vary with the format that you typically</p> <p>16 expect.</p> <p>17         Q. You did review the drafts of your</p> <p>18 reports with Mr. Brautigam?</p> <p>19         A. Yes.</p> <p>20         Q. Did he suggest changes to you?</p> <p>21         A. Sometimes, yes.</p> <p>22         Q. Did you make those changes?</p> <p>23         A. Sometimes, yes, sometimes, no.</p> <p>24         Q. Do you recall any changes that</p> <p>25 Mr. Brautigam asked you to make that you</p>	<p style="text-align: right;">Page 108</p> <p>1                   <b>FUERMAN</b></p> <p>2 front of you?</p> <p>3           A. Yes, I do. The one dated August the</p> <p>4 8th?</p> <p>5           Q. Yes, sir. I think we talked about</p> <p>6 this off the record, I'll make sure it's on</p> <p>7 the record.</p> <p>8           You have prepared Fuerman Deposition</p> <p>9 Exhibit 2, which we talked about?</p> <p>10         A. That is correct.</p> <p>11           MR. BURKE: Mark that as 4.</p> <p>12           (Fuerman Exhibit 4, document, marked</p> <p>13 for identification, as of this date.)</p> <p>14         Q. Take a look at what we've now</p> <p>15 correctly marked as Fuerman Deposition</p> <p>16 Exhibit 4. Can you identify the substituted</p> <p>17 Fuerman Exhibit 4?</p> <p>18         A. Yes. This is the document that was</p> <p>19 filed with the court March 5, 2004. It was</p> <p>20 the second document I wrote for this case that</p> <p>21 got filed with the court.</p> <p>22         Q. What were the circumstances under</p> <p>23 which you prepared Fuerman Deposition</p> <p>24 Exhibit 4?</p> <p>25         A. The circumstances were that first I</p>
<p style="text-align: right;">Page 107</p> <p>1                   <b>FUERMAN</b></p> <p>2 elected not to make specifically?</p> <p>3           A. Usually they were clerical typo</p> <p>4 changes. Or sometimes he would perceive that</p> <p>5 I made a clerical or typo error or spelling</p> <p>6 error, syntax error and sometimes I would</p> <p>7 disagree with him. So there were sometimes</p> <p>8 those back and forth.</p> <p>9           It's my philosophy that you want to</p> <p>10 be, in any kind of report, whether it's an</p> <p>11 academe or in a law court, you want to be</p> <p>12 sufficiently long enough to cover the subject,</p> <p>13 but you don't want it to be so long a</p> <p>14 disburdenment of the people trying to read it.</p> <p>15 Sometimes we may have had a difference of</p> <p>16 opinion on what length the document should</p> <p>17 have.</p> <p>18         I'm trying to think what else.</p> <p>19 There was one situation on the expert report</p> <p>20 where there was the belief, and I thought it</p> <p>21 was a mistake in belief, that I had made an</p> <p>22 error on a certain point. So I discussed it</p> <p>23 with Mike and he agreed with my view, that</p> <p>24 there was no error.</p> <p>25         Q. Do you have your report still in</p>	<p style="text-align: right;">Page 109</p> <p>1                   <b>FUERMAN</b></p> <p>2 submitted an expert report January 22, 2004.</p> <p>3 Sometime after that Dr. Tafin Tuzin submitted</p> <p>4 a document that there's been some confusion</p> <p>5 about, but appeared to attempt to rebut my</p> <p>6 report. So this is in rebuttal to Dr. Tuzin's</p> <p>7 document.</p> <p>8         Q. Then subsequently on August 8, 2004</p> <p>9 you submitted Plaintiffs' Exhibit 115,</p> <p>10 correct, which is in front of you?</p> <p>11         A. August.</p> <p>12         Q. August 8, 2004?</p> <p>13         A. Yes, but that wasn't filed with the</p> <p>14 court I don't believe, or was it.</p> <p>15         Q. But that's the latest report you've</p> <p>16 done?</p> <p>17         A. That's the latest report I've done.</p> <p>18         Q. Am I correct that Plaintiffs' 115</p> <p>19 sets forth sort of the updated report and</p> <p>20 opinions that you are prepared to give in this</p> <p>21 case?</p> <p>22         A. That is correct. I feel that it's a</p> <p>23 standalone document. It's the result of</p> <p>24 additional, many hours of further research,</p> <p>25 writing and reflection during the summer on</p>

<p>1                   <b>FUERMAN</b></p> <p>2 this case.</p> <p>3           Q. On page 2 of Plaintiffs' Exhibit</p> <p>4 115, of your report, there's a list of</p> <p>5 materials and documents that you looked at.</p> <p>6           A. I'm sorry. Are we on?</p> <p>7           Q. Exhibit 115</p> <p>8           A. Page 2.</p> <p>9           Q. Roman Numeral two.</p> <p>10          A. Yes, I'm with you.</p> <p>11          Q. Is there a list of everything you</p> <p>12 reviewed for purposes of your testimony in</p> <p>13 this case?</p> <p>14          MR. BRAUTIGAM: Objection. At what</p> <p>15 point?</p> <p>16          MR. BURKE: At the point he wrote</p> <p>17 this report.</p> <p>18          MR. BRAUTIGAM: Okay, because as we</p> <p>19 indicated, he reviewed Carey's testimony</p> <p>20 last night.</p> <p>21          Q. We understand it's a standing</p> <p>22 clarification, Professor Fuerman, that there</p> <p>23 are some additional things that you are</p> <p>24 looking at or have looked at?</p> <p>25          A. That's correct.</p>	Page 110	Page 112
<p>1                   <b>FUERMAN</b></p> <p>2           Q. You looked at Mr. Carey's</p> <p>3 deposition, you looked at Dr. Prowse's report,</p> <p>4 some other things that your counsel will</p> <p>5 advise me in a more exhaustive list, of what</p> <p>6 you've looked at in addition to what's listed</p> <p>7 here.</p> <p>8          My question is, as and at the time</p> <p>9 you prepared Plaintiffs' Exhibit 115, does</p> <p>10 page 2 of your report list the materials that</p> <p>11 you looked at?</p> <p>12          A. There's much more that I looked at</p> <p>13 than this. For example, the accounting and</p> <p>14 auditing literature, I don't think I mention</p> <p>15 that in this list. So far as pleadings in</p> <p>16 this case, I think this list captures all of</p> <p>17 them to that point, and deposition</p> <p>18 transcripts, that kind of thing I think I may</p> <p>19 have inadvertently omitted one or two things.</p> <p>20          Q. At least as you look at it, this is</p> <p>21 a fair representation of the pleadings and the</p> <p>22 deposition transcripts and PFGI OHSL documents</p> <p>23 that you looked at specifically?</p> <p>24          A. That is correct. I can't remember</p> <p>25 when I wrote this exactly, but I'm not sure</p>	Page 111	Page 113
<p>1                   <b>FUERMAN</b></p> <p>2 why I did not list that I read the various</p> <p>3 accounting and auditing standards. Maybe I</p> <p>4 didn't feel it was necessary.</p> <p>5           Q. I understand. Who selected these</p> <p>6 materials for you to review?</p> <p>7           A. They were sent to me by</p> <p>8 Mike Brautigam, but we discussed on the phone</p> <p>9 what documents I logically ought to look at.</p> <p>10 I think I informed him my views and I think</p> <p>11 there was no difference of opinion that</p> <p>12 logically members of the audit committee,</p> <p>13 members of the senior executives of the</p> <p>14 company, those were important transcripts to</p> <p>15 read.</p> <p>16          Q. Did you ever ask for additional</p> <p>17 materials from Mr. Brautigam in addition to</p> <p>18 those that are listed here?</p> <p>19          A. No, I don't think so.</p> <p>20          Q. Did you ever go on the PACER system</p> <p>21 and pull other pleadings on your own?</p> <p>22          A. Yes. What I did early in the case,</p> <p>23 there was a judicial opinion and I found it on</p> <p>24 PACER. I can't remember if it's the former</p> <p>25 judge of this case or perhaps Judge Siegel.</p> <p>1                   <b>FUERMAN</b></p> <p>2 Isn't Judge Siegel the judge on another</p> <p>3 Providence cases?</p> <p>4           Q. Spiegel, right.</p> <p>5          A. There was an additional opinion</p> <p>6 perhaps by Judge Spiegel that just discussed</p> <p>7 the case and what had been happening for the</p> <p>8 last couple of years. I read through that</p> <p>9 carefully and it gave me just a sense of what</p> <p>10 was happening. I may have read a couple other</p> <p>11 documents.</p> <p>12          Q. Do you recall what those are as you</p> <p>13 sit here today?</p> <p>14          A. I remember in one of the pleadings</p> <p>15 by the defendants there was something in an</p> <p>16 attempt to rebut me about a case in Nebraska</p> <p>17 or something. I think I may have pulled that</p> <p>18 up and look at it, and I may have looked at</p> <p>19 some other cases around that time. My general</p> <p>20 -- I can't remember the names of these cases,</p> <p>21 I don't know if I have a list of them even --</p> <p>22 but my general impression was, as had been my</p> <p>23 understanding, that it's rare to find this</p> <p>24 issue discussed in Lexis Nexus because</p> <p>25 typically if financial statements are</p>	Page 113	

<p style="text-align: right;">Page 114</p> <p>1                   <b>FUERMAN</b>  2 subsequently restated, the defense stipulates  3 that the originally issued financial  4 statements were materially misstate.  5                   Q. Have you ever worked on the defense  6 of a securities class action involving a  7 restatement?  8                   MR. BRAUTIGAM: Objection, asked and  9 answered.  10                  A. I have not worked on the defense of  11 a securities class action. I've worked on the  12 defense of direct actions when I was at the  13 small firm in Ohio.  14                  Q. Can you cite me to any cases in  15 which the defense, in your phrase, stipulated  16 to whatever the stipulation was that you just  17 described?  18                  MR. BRAUTIGAM: Objection to the  19 form.  20                  A. I can't cite a case, but in the  21 course of my research I speak with many  22 securities attorneys, both on plaintiffs side  23 and the defense side. They informed me that  24 it's highly unusual for defense attorneys to  25 not agree to stipulate on this issue.</p>	<p style="text-align: right;">Page 116</p> <p>1                   <b>FUERMAN</b>  2 it's just very unusual, the posture the  3 defendants are taking in this case, with  4 regard to the issue of whether the originally  5 issued financial statements were materially  6 misstated when subsequently they were  7 restated.  8                  Q. Who has told you that, what  9 securities practitioners are you referring to  10 specifically?  11                  A. I've been most recently I was told  12 that by -- first of all, I don't know that I  13 should answer because perhaps I might be  14 betraying a confidence having been advised  15 this by.  16                  Q. Is this part of your opinion, that  17 securities practitioners tell you this ought  18 to be stipulated to? It's in your opinion.  19                  A. It is.  20                  Q. If this is one of your opinions I  21 want to know what the basis of it is?  22                  A. I'll tell you the person who told me  23 this was an attorney at Berman DeValero.  24                  Q. What's the name of the attorney?  25                  A. Michael Mitrea.</p>
<p style="text-align: right;">Page 115</p> <p>1                   <b>FUERMAN</b>  2                  That's why it doesn't show up on  3 Lexus Nexus because it doesn't get litigated.  4                  Q. But you do agree with me that the  5 issue you are talking about of materiality of  6 restatements does not appear in Lexus Nexus,  7 at least in your research; is that right?  8                  MR. BRAUTIGAM: Objection.  9                  A. I agree it does not appear, but the  10 reason it does not appear is because it's  11 stipulated. Only things that are litigated  12 appear in Lexus Nexus.  13                  Q. Your understanding is the only  14 things that ever appear in Lexus Nexus are  15 things that get litigated?  16                  A. In judicial opinions.  17                  Q. Would that involve motions?  18                  A. Judges are called to decide disputes  19 among the litigants as to what are the  20 relevant facts, well actually that's the trier  21 of fact that does that mainly, but to decide  22 what's the relevant law. If there were  23 something that was very often in dispute I  24 would expect to find it in Lexus Nexus.  25                  Various attorneys have told me that</p>	<p style="text-align: right;">Page 117</p> <p>1                   <b>FUERMAN</b>  2                  Q. Is he a Plaintiffs' counsel?  3                  A. He is a Plaintiffs' counsel.  4                  Q. Did he give you the names of any  5 cases in which materiality was stipulated in  6 the context of a restatement?  7                  A. I didn't ask him for the names of  8 cases.  9                  Q. Anybody other than Mr. Mitrea tell  10 you that?  11                  A. I've heard this from other people.  12 I can't remember their names, but I remember  13 hearing this also from a person who has served  14 as an expert witness.  15                  Q. Which expert witness, I'm sorry?  16                  A. He is with the McGladrey and Poland  17 C.P.A. firm.  18                  Q. Where are they based?  19                  A. I think they may be headquartered in  20 Minnesota, but they are all over the country.  21 He's in the Boston area, and he told me that  22 this is highly unusual in his experience, and  23 he's been involved in many litigations for  24 defense to not go ahead and stipulate that  25 materially -- that the originally issued</p>

<p>1                   <b>FUERMAN</b></p> <p>2 financials were materially misstated and</p> <p>3 subsequently they are restated.</p> <p>4       Q. Did he give you any examples of</p> <p>5 cases, specific cases where this stipulation</p> <p>6 supposedly occurred?</p> <p>7       A. No, he did not.</p> <p>8       Q. Anyone else that you can think of</p> <p>9 other than those two individuals?</p> <p>10      A. At this point I cannot think of</p> <p>11 another person.</p> <p>12      Q. You know what a "motion for summary</p> <p>13 judgment" is?</p> <p>14      A. Yes.</p> <p>15      Q. You are aware that from time to time</p> <p>16 motions for summary judgment, whether they are</p> <p>17 granted or denied, are reported in Lexis</p> <p>18 Nexus?</p> <p>19      A. Sometimes, yes.</p> <p>20      Q. Are you aware or did your research</p> <p>21 reveal any summary judgment decision involving</p> <p>22 the kind of stipulation regarding materiality</p> <p>23 that you've testified to?</p> <p>24      A. I've never seen any discussion of</p> <p>25 the matter being stipulated among counsel, but</p>	Page 118	Page 120
<p>1                   <b>FUERMAN</b></p> <p>2 I would add that I can't remember seeing any</p> <p>3 other judicial opinion that had any other</p> <p>4 matter stipulated among counsel discussed in</p> <p>5 the decision. I mean typically that's just</p> <p>6 not something you would find in any judicial</p> <p>7 opinion.</p> <p>8       Q. Stipulations do not appear?</p> <p>9       A. Stipulations among counsel. I</p> <p>10 cannot recall sitting here today of a</p> <p>11 stipulation among counsel being discussed in</p> <p>12 any judicial opinion.</p> <p>13      Q. You've never seen a judicial</p> <p>14 opinion, for example, summary judgment saying</p> <p>15 a certain fact is not contested or not</p> <p>16 disputed between the parties or the parties</p> <p>17 agree on a certain fact; is that your</p> <p>18 testimony?</p> <p>19      A. Usually it's phrased like the</p> <p>20 essential facts are not in dispute, they will</p> <p>21 go and talk, but it's not made clear whether</p> <p>22 the parties have stipulated to this or this is</p> <p>23 the judge's belief, that these are the</p> <p>24 relevant facts despite what the counsel have</p> <p>25 said to each other.</p>	Page 119	Page 121
<p>1                   <b>FUERMAN</b></p> <p>2 I just cannot remember a single</p> <p>3 judicial opinion that clearly said this, well,</p> <p>4 at one point it may have been disputed between</p> <p>5 the parties, but now they've stipulated as to</p> <p>6 it. I can't think of a single judicial</p> <p>7 opinion like that, but I'm here as an</p> <p>8 accounting expert.</p> <p>9       Q. I understand. My question though</p> <p>10 is, you did undertake a search in Lexis Nexus</p> <p>11 for whether or not a restatement evolved into</p> <p>12 a stipulation among the parties as to the</p> <p>13 materiality of the misstated financials; is</p> <p>14 that correct?</p> <p>15      A. I did a search in Lexis Nexus to see</p> <p>16 if there were other cases like this cited case</p> <p>17 in Nebraska, whether it was a complete</p> <p>18 anomaly. From my research it appeared to be a</p> <p>19 complete anomaly.</p> <p>20      Q. That's one decided case that does</p> <p>21 deal with this issue, right?</p> <p>22      A. I believe it's in the Eighth</p> <p>23 Circuit.</p> <p>24      Q. It goes the other way from what your</p> <p>25 testimony is; is that correct?</p>		

<p style="text-align: right;">Page 122</p> <p>1                   <b>FUERMAN</b></p> <p>2 reviewed, which is where I think we took this</p> <p>3 sort of detour. Other than the materials you</p> <p>4 gave me that you looked at independently and</p> <p>5 the accounting literature, this does indicate</p> <p>6 on Plaintiffs' 2, of Exhibit 115, this does</p> <p>7 generally indicate the materials that</p> <p>8 Mr. Brautigam sent you to review?</p> <p>9                   A. That is correct.</p> <p>10                  Q. Following his discussions with you?</p> <p>11                  A. Correct.</p> <p>12                  Q. You never reviewed the depositions</p> <p>13 of any of the class plaintiffs in this case,</p> <p>14 correct?</p> <p>15                  A. That is correct.</p> <p>16                  Q. Is there a reason why you decided</p> <p>17 that was not relevant?</p> <p>18                  A. I didn't know that such depositions</p> <p>19 were taken.</p> <p>20                  Q. And Mr. Brautigam didn't mention</p> <p>21 that to you?</p> <p>22                  A. No, he did not. I don't know that</p> <p>23 that would be something that I would want to</p> <p>24 study though. I'd have to think about whether</p> <p>25 that's important. My initial reaction is I</p>	<p style="text-align: right;">Page 124</p> <p>1                   <b>FUERMAN</b></p> <p>2 read everything I can get my hands on and form</p> <p>3 an opinion on materiality or restatement or</p> <p>4 nexus between the two.</p> <p>5                  Q. What is your understanding of the</p> <p>6 current status of the Thiemann litigation on</p> <p>7 which you are providing this testimony if you</p> <p>8 have one?</p> <p>9                  MR. BRAUTIGAM: Objection.</p> <p>10                 A. I'm confused by your question.</p> <p>11                 Q. Is it a class action or not?</p> <p>12                 MR. BRAUTIGAM: Objection.</p> <p>13                 A. I believe it's a class action, but</p> <p>14 maybe it's a direct action. I have not even</p> <p>15 paid attention to that to be honest.</p> <p>16                 Q. Have you ever seen an order from</p> <p>17 Judge Beckwith decertifying the class?</p> <p>18                 A. Again, I have not focused on that</p> <p>19 procedural aspect of the case. Although those</p> <p>20 are important questions it's not stuff that I</p> <p>21 have focused my attention on.</p> <p>22                 Q. So at least as you sit here today</p> <p>23 you don't know if this is a class action or</p> <p>24 not a class action?</p> <p>25                 MR. BRAUTIGAM: Objection to the</p>
<p style="text-align: right;">Page 123</p> <p>1                   <b>FUERMAN</b></p> <p>2 don't think it would have been important.</p> <p>3                  Q. If two of the class plaintiffs</p> <p>4 testified they never looked at any of the</p> <p>5 financial information in the proxy statement,</p> <p>6 would that be relevant to you?</p> <p>7                  A. Are you asking my opinion of</p> <p>8 interpreting the securities laws or as an</p> <p>9 accounting expert? Because it's well known the</p> <p>10 fraud on the market theory says it's not</p> <p>11 terribly important whether they looked at</p> <p>12 those.</p> <p>13                  Q. Do you believe the fraud of the</p> <p>14 market theory is still viable in this case, do</p> <p>15 you know?</p> <p>16                  A. I'm gasping for breath at being</p> <p>17 asked legal questions. I don't --</p> <p>18                  Q. My question is a real simple one.</p> <p>19 You just talked about fraud in the market. My</p> <p>20 question is, do you know whether given the</p> <p>21 current state of this case whether that's a</p> <p>22 viable theory in this case, as things now</p> <p>23 stand?</p> <p>24                  A. I have not investigated that issue</p> <p>25 at all. I have been engaged to investigate,</p>	<p style="text-align: right;">Page 125</p> <p>1                   <b>FUERMAN</b></p> <p>2 form. I think you mean whether or not</p> <p>3 it's certified as a class action at this</p> <p>4 point in time.</p> <p>5                  MR. BURKE: I'll stand corrected</p> <p>6 with that.</p> <p>7                  A. That's a good question. I don't</p> <p>8 know. I assume, again, I only have so many</p> <p>9 hours in the day.</p> <p>10                 I have not investigated this, but I</p> <p>11 assume that the plaintiffs must have withstood</p> <p>12 the motion to dismiss or we wouldn't be going</p> <p>13 through depositions. But maybe I'm incorrect</p> <p>14 on that. I don't know.</p> <p>15                 Q. Did you ever see the original, the</p> <p>16 decision on the original complaint, granting</p> <p>17 in part and denying in part the motion to</p> <p>18 dismiss that Judge Beckwith originally filed</p> <p>19 in this case?</p> <p>20                 A. I may have. The only opinion that I</p> <p>21 really remember fairly well is one, and I</p> <p>22 can't remember if it was by Judge Beckwith or</p> <p>23 Judge Spiegel, that discussed how the case had</p> <p>24 been going for the last two years and a</p> <p>25 decision to consolidate together a few cases,</p>

<p>1                    FUERMAN</p> <p>2 it might have been by Judge Beckwith, because</p> <p>3 of judicial efficiency. This was to bring</p> <p>4 myself up to speed on what happened, but I</p> <p>5 don't know the answer to your question.</p> <p>6                    Q. You talk about some PFGI minutes</p> <p>7 among the documents that you looked at.</p> <p>8                    A. That's correct.</p> <p>9                    Q. That's on page 2 of your report.</p> <p>10 Did you ever read any OHSL board minutes?</p> <p>11                    A. I think I did. I think I did, but I</p> <p>12 didn't spend a lot of time on them. I know</p> <p>13 that those are very important to -- let me</p> <p>14 back up and explain myself.</p> <p>15                    My understanding of the general</p> <p>16 theme of this case, you asked me maybe ten</p> <p>17 minutes ago my understanding, is it began as</p> <p>18 an allegation of breach of fiduciary duty,</p> <p>19 with regard to the merger of OHSL into to</p> <p>20 Provident. But later it evolved into also</p> <p>21 having an accounting aspect to it, that's</p> <p>22 where I got brought in.</p> <p>23                    I have minimally familiarized myself</p> <p>24 with anything other than the accounting</p> <p>25 aspect, because first of all, that's not my</p>	<p>Page 126</p>	<p>1                    FUERMAN</p> <p>2                    Q. Are you aware that other than in</p> <p>3 action other lawsuits have been filed in</p> <p>4 connection with that restatement?</p> <p>5                    A. Yes, I am.</p> <p>6                    Q. Are you aware of the current status</p> <p>7 of those actions?</p> <p>8                    A. I believe -- I have a thousand cases</p> <p>9 in my database and Provident is one of them.</p> <p>10 I think I probably have noticed a little bit</p> <p>11 about it. I know Judge Spiegel issued a</p> <p>12 judicial opinion.</p> <p>13                    I can't recall whether he dismissed</p> <p>14 completely or dismissed in part claims of the</p> <p>15 plaintiffs, and I don't know whether those are</p> <p>16 being appealed. Again, my reading of the</p> <p>17 various other documents is to learn everything</p> <p>18 I can that will better my understanding of the</p> <p>19 accounting matters.</p> <p>20                    Q. You are aware that Judge Spiegel</p> <p>21 dismissed in one form or another the</p> <p>22 allegations arising from the restatement</p> <p>23 itself, are you not?</p> <p>24                    MR. BRAUTIGAM: Objection to the</p> <p>25 form.</p>	<p>Page 128</p>
<p>1                    FUERMAN</p> <p>2 expertise.</p> <p>3                    Q. To be honest with you, Dr. Fuerman,</p> <p>4 Professor Fuerman, I'm not trying to do</p> <p>5 anything today other than make sure I</p> <p>6 understand where your area of expertise lies,</p> <p>7 what your focus was and what you are going to</p> <p>8 testify to, okay. To a certain extent I'm</p> <p>9 trying to narrow the field and make sure I am</p> <p>10 understand where you are going.</p> <p>11                    MR. BRAUTIGAM: Objection to the</p> <p>12 speech.</p> <p>13                    MR. BURKE: That's fine.</p> <p>14                    Q. That's not a question.</p> <p>15                    A. I know that these are serious issues</p> <p>16 and important issues, and I have maybe a</p> <p>17 threshold knowledge and understanding of these</p> <p>18 issues, but I don't hold myself out as an</p> <p>19 expert in those breach of fiduciary duty</p> <p>20 issues.</p> <p>21                    Q. You are aware that the accounting</p> <p>22 issues of which you have opined relate to a</p> <p>23 restatement analysis by Provident in March,</p> <p>24 April of 2003, correct?</p> <p>25                    A. Correct.</p>	<p>Page 127</p>	<p>1                    FUERMAN</p> <p>2                    A. Again, I'm not aware of that.</p> <p>3                    Q. You don't recall reviewing that</p> <p>4 opinion?</p> <p>5                    A. I'm pretty sure I remember reading</p> <p>6 that opinion, but I can't remember whether he</p> <p>7 dismissed in whole or in part exactly what</p> <p>8 claims he dismissed.</p> <p>9                    Q. One of the documents you looked at,</p> <p>10 item B on page 2, is the consolidated amended</p> <p>11 class action complaint; am I correct?</p> <p>12                    A. That's right.</p> <p>13                    Q. Did you ever review any of the</p> <p>14 motions to dismiss that were filed by the</p> <p>15 defendants in response to that?</p> <p>16                    A. No, I did not.</p> <p>17                    Q. Is there a reason why you never</p> <p>18 thought it appropriate to look at the defense</p> <p>19 version of this case?</p> <p>20                    MR. BRAUTIGAM: Objection.</p> <p>21                    A. I felt that I got a sufficient</p> <p>22 understanding of the defenses position by</p> <p>23 reading the transcripts of the defendants, and</p> <p>24 in conjunction with your objections you made</p> <p>25 at these depositions at key points. I felt</p>	<p>Page 129</p>

<p style="text-align: right;">Page 130</p> <p>1                   <b>FUERMAN</b></p> <p>2 that, plus the expert reports of Dr. Prowse  3 and, if we call it an expert report of  4 Dr. Tuzin, that was what I needed to know.  5 There are 400 docket entries for this case,  6 that's a lot of stuff to go through. My  7 feeling was if I attempted to plow through too  8 much of this I would not get a good grasp of  9 the issues tightly related to materiality and  10 restatements.</p> <p>11           Q. But at least as you sit here today  12 you have no understanding of the legal  13 theories and the legal defenses asserted by  14 the defendants with respect to the  15 consolidated amended class action complaint?</p> <p>16           MR. BRAUTIGAM: Objection.</p> <p>17           A. I have a limited understanding that  18 the defense contends that it did not breach  19 its fiduciary duties, either the Oak Hill  20 board did not, that the Provident board did  21 not. I mean it all comes out pretty clearly  22 in the deposition transcripts and in the  23 expert reports by Dr. Prowse and Dr. Tuzin.</p> <p>24           Now, maybe there's some expert  25 reports on the fiduciary duties or something</p>	<p style="text-align: right;">Page 132</p> <p>1                   <b>FUERMAN</b></p> <p>2 computer data, notes, analysis?</p> <p>3           A. No, no, I do not.</p> <p>4           Q. Did you ever conduct any research  5 into OHSL, its demographics, operations,  6 history, anything like that?</p> <p>7           MR. BRAUTIGAM: Objection.</p> <p>8           Q. OHSL is OHSL Financial Corporation,  9 one of the defendants.</p> <p>10           A. Minimal amount of research. A  11 couple of press releases I found on Lexus.  12 I'm trying to remember if they even had a 10K  13 on Lexus.</p> <p>14           It was not a real big company. I'm  15 not sure if they had a 10K on Lexus. It was a  16 fairly small amount of research.</p> <p>17           Q. Do you consider yourself an expert  18 on OHSL or what it was facing in either the  19 securities markets or the savings and loan  20 markets in Ohio in 1999?</p> <p>21           MR. BRAUTIGAM: Objection.</p> <p>22           A. I do not consider myself an expert  23 on that topic. Other than just anyone who  24 reads the general financial press knows that  25 there has been a general consolidation in the</p>
<p style="text-align: right;">Page 131</p> <p>1                   <b>FUERMAN</b></p> <p>2 that I have not looked at but, again, there's  3 a lot of stuff to agree with.</p> <p>4           Q. That I agree with. You refer to a  5 number of deposition transcripts on this page.  6 Did you read those transcripts in full or just  7 excerpts?</p> <p>8           A. The whole thing.</p> <p>9           Q. Of all of them?</p> <p>10           A. Let me make sure. I skimmed the  11 ones that are prior to the restatement, but I  12 read very carefully the ones after the  13 restatement. For example, I skimmed the depo  14 of Joe Stager, January 16, 2002, but read very  15 carefully the May 7, 2004 deposition of  16 Joe Stager.</p> <p>17           Q. As you sit here today have you  18 prepared any demonstrative charts or diagrams  19 to demonstrate your opinion, other than the  20 ones attached to your report?</p> <p>21           A. I have not, but I specifically  22 reserved right to do so in my expert report.</p> <p>23           Q. Other than the background documents  24 we've talked about earlier today that you  25 brought with you, do you have any other</p>	<p style="text-align: right;">Page 133</p> <p>1                   <b>FUERMAN</b></p> <p>2 financial services industry; little banks  3 being merged into big banks over the past  4 generation.</p> <p>5           MR. BURKE: Let's go off the record  6 for a second.  7           (Discussion off the record.)</p> <p>8           Q. Professor Fuerman, other than the  9 APB 20 and the other specific materials you  10 cite in your report, were there any treatises,  11 generally accepted publications in your field  12 of expertise that were relevant to the work  13 you performed?</p> <p>14           A. Yes.</p> <p>15           Q. What were they?</p> <p>16           A. To refresh my memory I need to look  17 at the time sheet. At the beginning of my  18 involvement in this case --</p> <p>19           MR. BURKE: Let's go off the record  20 for one second.</p> <p>21           (Fuerman Exhibit 5, document, marked  22 for identification, as of this date.)</p> <p>23           Q. Take a look at Fuerman Exhibit 5 and  24 if you would identify that for the record,  25 Dr. Fuerman.</p>

<p style="text-align: right;">Page 134</p> <p>1           <b>FUERMAN</b></p> <p>2       A. Okay. This is a time sheet of my 3 time spent working on this case and billings 4 to Mesh and Associates. I wanted to look at 5 this to see some of the things that I read. 6 There are two treatises, one the Miller GAAP 7 guide and the other the Wiley, W-I-L-E-Y, GAAP 8 guide, G-A-A-P. I consolidated them to get a 9 better understanding of APB No. 20. 10      These treatises are important 11 because they will indicate whether an APB that 12 was issued is still in its original form, 13 good, a good accounting standard or whether 14 it's been modified in subsequent years. The 15 bottom line is I determined that it's really 16 not been modified in any meaningful way that 17 has an impact on this case. 18      Q. When you began your work on this 19 case, was it necessary -- I'm sorry. 20      A. I'm sorry. In doing this case there 21 is a specific way that accounting research is 22 performed, and I felt myself to be bound by 23 that. First you look to see if there are any 24 FASB statements and interpretations. There 25 were none that were on point.</p>	<p style="text-align: right;">Page 136</p> <p>1           <b>FUERMAN</b></p> <p>2 research, empirical research, I had to make a 3 lot of -- I had to develop the initial 4 conclusions about what is a restatement and 5 what is not for purposes of the academic 6 research, which is pretty much the same as the 7 understanding of what people in the financial 8 press say when they say what's a restatement. 9        Technically a restatement can cover 10 more situations than what the financial press 11 discusses. I had to work that out in my 12 research. I had to carefully determine that. 13      Q. Notwithstanding I think what you 14 said is your continuing focus on APB 20 in 15 your career, you had to go back and check to 16 see whether it was even still authoritative 17 when you began your work; is that right? 18      MR. BRAUTIGAM: Objection. 19      A. Well, yes. I mean, it is one of the 20 older accounting standards from 1970. One of 21 the accounting bodies, I can't remember if 22 it's the Emerging Issues Tasks Force or 23 another one is holding discussions and have 24 circulated exposure drafts considering 25 revising it and replacing it with a new</p>
<p style="text-align: right;">Page 135</p> <p>1           <b>FUERMAN</b></p> <p>2      Q. Let me stop you. We're going to get 3 into what's in your report. My question right 4 now goes to treatises. 5      A. Journal articles? 6      Q. Journal articles or publications not 7 reflected in your report. 8      A. Oh, not reflected in the report. 9      Q. Yes, that were important. 10     A. Probably what I've just related to 11 you on the time sheet is it, I think. 12     Q. So at the start of your work on this 13 case you looked at a couple of GAAP guides to 14 discuss APB points? 15     A. I'm sorry, I'm stepping on your 16 question. I may have even asked a couple 17 other faculty what their understanding was. 18     Q. I take it at the time you began your 19 work on this case you had not worked with APB 20 recently? 21     A. Not as an expert witness, but I've 22 worked on it continuously since I began my 23 dissertation back in 1994. APB No. 20, since 24 I was the first researcher who had to 25 interpret APB No. 20, how to implement it in</p>	<p style="text-align: right;">Page 137</p> <p>1           <b>FUERMAN</b></p> <p>2 standard. 3      Q. Has any such revised standard been 4 adopted? 5      A. No. 6      Q. Other than the two sources you just 7 identified, is there anything else in terms of 8 treatises, journals, publications in your 9 field of expertise that were relevant to your 10 report other than what's already cited in your 11 report, which we'll get to? 12     A. I don't think so, but just in the 13 last two minutes I've come up with two or 14 three things that I had not thought of. For 15 example, the consideration of the possible 16 revision of APB No. 20 at some time in the 17 future, the Miller GAAP guide, the Wiley GAAP 18 guide. 19     Q. That's fine. 20     A. Maybe this afternoon I'll think of 21 additional things. 22     Q. If you do that's fine. Feel free to 23 supplement. 24     MR. BURKE: Let's break now for 25 lunch and see you at one o'clock.</p>

<p style="text-align: right;">Page 138</p> <p>1                   <b>FUERMAN</b>  2                    A F T E R N O O N    S E S S I O N  3                    (Time noted: 1:17 p.m.)  4    R O S S    F U E R M A N , resumed and testified  5    as follows:  6    EXAMINATION BY (Cont'd.)  7    MR. BURKE:  8        Q. Professor Fuerman, what I'd like to  9    do is take a look at Plaintiffs' Exhibit 115.  10   We've talked about that at various times  11   already today. I'd like to go through that a  12   little bit, if I could and ask you some  13   questions about that.  14    A. Please do.  15    MR. BURKE: Off the record.  16       (Discussion off the record.)  17    Q. Page 1 of your report, paragraph  18   two.  19    A. Yes.  20    Q. You say -- that sentence reads "As  21   an expert on financial reporting related to  22   securities fraud litigation, especially  23   restatements." Do you see that language?  24    A. Yes.  25    Q. I'm correct, am I not, that you do</p>	<p style="text-align: right;">Page 140</p> <p>1                   <b>FUERMAN</b>  2        Q. You've never taken a deposition of  3    any kind, as a direct questioner?  4        A. That is correct.  5        MR. BRAUTIGAM: Objection, asked and  6    answered.  7        Q. And you've never litigated a  8    securities fraud case?  9        MR. BRAUTIGAM: Same objection.  10      Q. As Plaintiffs' or defense counsel?  11        MR. BRAUTIGAM: Objection.  12        A. I've participated in the work to  13    litigate a securities fraud case. I've never  14   been in charge of it, never had the number one  15   responsibility for such a case.  16       Q. Maybe I'm misunderstanding. I'm  17   trying to doubleback to a point you made  18   earlier when we were talking about fraud on  19   the market. I thought, I may be wrong,  20   correct me if I am, you said I'm not an expert  21   in securities litigation?  22       A. Let me phrase it this way. There  23   are two meanings to the term "expert in  24   securities fraud litigation." One is do I  25   consider myself competent to lead the defense</p>
<p style="text-align: right;">Page 139</p> <p>1                   <b>FUERMAN</b>  2   not hold yourself out as an expert on  3   securities fraud litigation; is that correct?  4        A. I do not hold myself out as an  5   expert on how to litigate these cases, but I  6   hold myself out as an expert in researching  7   these cases.  8        Q. But in terms of how these cases are  9   handled, strategic decisions, legal issues as  10   it relates to litigation, you were not an  11   expert on that; is that right?  12        MR. BRAUTIGAM: Objection.  13        A. On the individual case I am not an  14   expert, but the nature of my research is to  15   look at very large numbers, hundreds of cases  16   in the aggregate and then draw inferences as  17   to the legal strategies of the parties, that's  18   one of the things that I discussed about in my  19   papers.  20        Q. Maybe I just want to make sure we  21   nail this down.  22        A. Certainly.  23        Q. You've never tried a case on your  24   own of any kind?  25        A. That's correct.</p>	<p style="text-align: right;">Page 141</p> <p>1                   <b>FUERMAN</b>  2   or lead the Plaintiffs' side in such a  3   lawsuit, no, no way. I would never take on  4   such responsibility.  5        Do I feel myself an expert in  6   writing about these cases in the aggregate, I  7   write about these cases in the aggregate, as  8   do other people who I cite here, and I feel  9   that I am an expert in that sense.  10       Q. Because you read about cases and  11   write about them?  12        MR. BRAUTIGAM: Objection.  13        A. And because I read about them and I  14   write about them and I dig up data and run  15   statistical analysis on them, that's why I  16   feel myself to be an expert on, yes.  17       Q. I also want to confirm one other  18   thing we talked about earlier. You mentioned  19   two individuals who you spoke to, who told you  20   that in restatement cases the parties usually  21   stipulate to materiality?  22       A. That is correct.  23        Q. I take it that you never  24   independently confirmed, substantiated or  25   verified that statement as it relates to</p>

<p>1                    FUERMAN  2 specific cases?  3                    MR. BRAUTIGAM: Objection.  4                    A. As to specific cases, no. I did not  5 ask them about specific cases. I asked them  6 or they may have even volunteered in passing  7 that the posture of defense in this case is  8 unusual from their experience.  9                    Q. But in terms of whether -- they  10 related that to you, but you have no  11 first-hand knowledge or experience one way or  12 the other with respect to that; is that  13 correct?  14                    MR. BRAUTIGAM: Objection.  15                    A. I disagree with that. The opinions  16 of these two people, and there may have been  17 others that I can't remember at this point, is  18 not what made up my mind. It simply confirmed  19 what I already had come to believe from  20 reading APB No. 20, that the position of the  21 defendants with regard to materiality of the  22 financial that were subsequently restated is  23 unusual and certainly unsupported by  24 APB No. 20.  25                    Q. We're not talking about APB No. 20.</p>	<p>Page 142</p> <p>1                    FUERMAN  2 area, that if it were the case that defendants  3 actually were protesting that the originally  4 issued financials were not materially  5 misstated I would have seen that. Because  6 I've seen many, many cases and talked with  7 hundreds of attorneys, both plaintiffs and  8 defense.  9                    There's solid agreement among them,  10 the general notion that if you are a defense  11 counselor and you are defending a C.P.A. firm,  12 oh, my God the financials got restated. That  13 opens the door to greater legal liability for  14 the C.P.A. firm.  15                    Q. Okay.  16                    A. This is the nature of the research.  17                    Q. In all those cases, in all that  18 experience you just described, can you cite me  19 to one instance, one specific instance where  20 the parties stipulated to materiality? That's  21 my question.  22                    MR. BRAUTIGAM: Objection.  23                    Q. Any instance, yes or no?  24                    A. I cannot do that. I would have to  25 go and look at my research database. If you</p>
<p>Page 143</p> <p>1                    FUERMAN  2                    A. But that is what I based my opinions  3 on. The discussions I had with a couple  4 individuals is simply chitchat, icing on the  5 cake.  6                    Q. Okay.  7                    A. I base my -- I never mention them in  8 the report. I base my report on publicly  9 available accounting and auditing standards,  10 journal articles, this kind of thing.  11                    Q. My point though is you never  12 verified, substantiated or confirmed the  13 validity or invalidity of that chitchat,  14 correct?  15                    MR. BRAUTIGAM: Objection.  16                    A. No. But, also, I have been working  17 on researching since 1994. Hundreds, no let  18 me correct myself, thousands of securities  19 litigations, not all of them alleging fraud.  20 Some, yes, some no. Actually not all of them  21 private securities class action.  22                    Some of them SEC enforcement actions  23 or justice department prosecutions. I would  24 think that since I have been working  25 diligently, especially in the restatements</p>	<p>Page 145</p> <p>1                    FUERMAN  2 wish, I'm sure I can dig up a case or two.  3                    Q. As you sit here today you can't give  4 me any example of that; is that right?  5                    MR. BRAUTIGAM: Objection.  6                    A. That's what I said.  7                    MR. BRAUTIGAM: Jim, do we have  8 Jason on the phone or not?  9                    MR. BURKE: Jason, are you on the  10 phone? Maybe not. Jason? He may be  11 here, he may not be here.  12                    Q. Okay. Back to page 1 of your  13 report, paragraph 4. You indicate you are  14 being compensated at the rate of \$150 per  15 hour; that's still correct?  16                    A. That is correct for my research and  17 writing, but not for my deposition.  18                    Q. What is your rate for your  19 deposition?  20                    A. \$300 per hour.  21                    Q. That is also your rate if you  22 testify at trial?  23                    A. Yes.  24                    Q. Paragraph five of your report, the  25 third sentence states, "I was asked to give an</p>

<p style="text-align: right;">Page 146</p> <p>1                   <b>FUERMAN</b></p> <p>2 opinion as an expert in financial accounting</p> <p>3 on the materiality of these misstatements to</p> <p>4 persons who may have relied on the PFGI</p> <p>5 financial statements." Do you see that?</p> <p>6           A. Yes.</p> <p>7           Q. Define for me, if you would, the</p> <p>8 basis for who you define as persons who may</p> <p>9 have relied on the PFGI financial statements?</p> <p>10           MR. BRAUTIGAM: Objection to the</p> <p>11           form.</p> <p>12           Q. I'm trying to understand the meaning</p> <p>13 of that phrase.</p> <p>14           A. The meaning of the phrase is</p> <p>15 starting from the notion of whenever a company</p> <p>16 issues financial statements, under financial</p> <p>17 accounting not managerial accounting, under</p> <p>18 financial accounting the whole reason is that</p> <p>19 so people outside the company can read them</p> <p>20 and rely on them to know what's going on</p> <p>21 financially within the company.</p> <p>22           That's what I meant. I did not mean</p> <p>23 to infer anything about specific reliance TO</p> <p>24 specific people or fraud on the market or this</p> <p>25 or that. That's going beyond what was going</p>	<p style="text-align: right;">Page 148</p> <p>1                   <b>FUERMAN</b></p> <p>2           A. The level of sophistication among</p> <p>3 the different users of the financial</p> <p>4 statements may vary?</p> <p>5           Q. Yes, sir.</p> <p>6           A. That's the basic axiom of the</p> <p>7 financial accounting literature, is to try to</p> <p>8 develop financial statements that meet the</p> <p>9 needs of the diverse group of users of the</p> <p>10 financial statements.</p> <p>11           Q. Okay. Take a look at page 3 of your</p> <p>12 report, if you would. Paragraph eight states,</p> <p>13 "Users of a corporation's financial reporting</p> <p>14 attach greater credibility to a corporation's</p> <p>15 audited annual financial statements because an</p> <p>16 audit is the highest form of assurance that a</p> <p>17 C.P.A. firm can provide that the corporation's</p> <p>18 annual statements are correct." Do you see</p> <p>19 that?</p> <p>20           A. Yes, materially correct.</p> <p>21           Q. It doesn't say that, does it?</p> <p>22           A. Well, then I meant materially</p> <p>23 correct. Maybe I decided it was like the</p> <p>24 Department of Redundancy department to use the</p> <p>25 word "materially" in three sentences in a row.</p>
<p style="text-align: right;">Page 147</p> <p>1                   <b>FUERMAN</b></p> <p>2 through my head.</p> <p>3           Q. Okay. That's my question. I</p> <p>4 appreciate the clarification. So in terms of</p> <p>5 individual's specific reliance on any of the</p> <p>6 financial statements, that's not something</p> <p>7 that you directly addressed in your opinion;</p> <p>8 is that correct, am I understanding you</p> <p>9 correctly?</p> <p>10           A. Let's say we were all shareholders,</p> <p>11 whether this shareholder is relying, but this</p> <p>12 one is not?</p> <p>13           Q. Yes, sir.</p> <p>14           A. No. I mean it's just the general</p> <p>15 concept that I'm talking about in paragraph</p> <p>16 five, the general concept when financial</p> <p>17 statements are issued the whole purpose is so</p> <p>18 that people outside the company can read them,</p> <p>19 use them, rely on them. That's the concept.</p> <p>20           Q. Obviously the level of financial</p> <p>21 sophistication varies widely between</p> <p>22 individuals who may be shareholders in a</p> <p>23 corporation, correct?</p> <p>24           MR. BRAUTIGAM: Objection.</p> <p>25           Q. Is that generally true?</p>	<p style="text-align: right;">Page 149</p> <p>1                   <b>FUERMAN</b></p> <p>2           Q. But your statement here states that</p> <p>3 "An audit is the highest form of assurance</p> <p>4 that a C.P.A. firm can provide that a</p> <p>5 corporation's financial statements are</p> <p>6 correct." We admit that's not the standard,</p> <p>7 do we not?</p> <p>8           A. Obviously very clearly it's GAAP</p> <p>9 that they be materially correct.</p> <p>10           Q. So the word "materially" was left</p> <p>11 out of that sentence?</p> <p>12           A. The word "materially" was</p> <p>13 inadvertently left out of that sentence.</p> <p>14           Q. Is "materially correct" the</p> <p>15 phraseology that is ordinarily used in audit</p> <p>16 opinions?</p> <p>17           A. No, I'd have to review my auditing</p> <p>18 textbook. I think it's more along the lines</p> <p>19 of the auditor gives an opinion, something</p> <p>20 along the lines of, in our opinion our audits</p> <p>21 provide reasonable assurance that the</p> <p>22 financials are materially fairly stated or</p> <p>23 something like that. I'd have to go and</p> <p>24 review my auditing textbook, but the word</p> <p>25 "materially" is definitely in there, almost</p>

<p>1                   <b>FUERMAN</b></p> <p>2 positive.</p> <p>3       Q. As you sit here today you don't even</p> <p>4 recall what the exact terminology that's used</p> <p>5 in audit opinions, as it relates to what the</p> <p>6 opinion is on financial statements; is that</p> <p>7 correct?</p> <p>8       MR. BRAUTIGAM: Objection.</p> <p>9       A. I used to have that memorized. I</p> <p>10 had to memorize that before I took and passed</p> <p>11 the Ohio C.P.A. exam. What is more important</p> <p>12 I think is that I understand the general</p> <p>13 concept, which is that the financials need to</p> <p>14 be materially correct or materially stated,</p> <p>15 fairly stated, and that I do.</p> <p>16       Q. The final sentence, pardon me, the</p> <p>17 final two sentences of that paragraph eight,</p> <p>18 the first one states, "It is a violation of</p> <p>19 auditing standards to issue an unqualified</p> <p>20 audited opinion if the financial statements</p> <p>21 are materially misstated."</p> <p>22       A. Yes, I wrote that.</p> <p>23       Q. What is the basis for that, what's</p> <p>24 your support for that?</p> <p>25       A. Volumes and volumes of auditing</p>	<p>Page 150</p> <p>1                   <b>FUERMAN</b></p> <p>2 you are looking for it.</p> <p>3       A. There are more complex things that</p> <p>4 accountants and auditors argue about. This is</p> <p>5 just not one of them.</p> <p>6       Q. My question though is, have you ever</p> <p>7 done any research or conducted any kind of a</p> <p>8 study or an analysis that substantiates this</p> <p>9 statement?</p> <p>10       A. Actually now that I think about it,</p> <p>11 I have in this sense. In my resume I cite an</p> <p>12 article. It's Exhibit A to this Plaintiffs'</p> <p>13 Exhibit 115. If you go to the second page,</p> <p>14 the third article, the role of auditor</p> <p>15 culpability.</p> <p>16       Q. This is the third page?</p> <p>17       A. No, excuse me. The second page of</p> <p>18 my resume, the third article listed from the</p> <p>19 top. The third is role of auditor</p> <p>20 culpability.</p> <p>21       Q. Okay.</p> <p>22       A. In that article I showed evidence --</p> <p>23       Q. Hang on for one second. I'm looking</p> <p>24 at Plaintiffs' Exhibit 115, August 8, 2004.</p> <p>25 Page 1 of Exhibit A ends up down at the bottom</p>
<p>1                   <b>FUERMAN</b></p> <p>2 standards. They all are based on that</p> <p>3 assumption. It's probably stated in several</p> <p>4 of the standards. Probably SAS number 58 if I</p> <p>5 recall.</p> <p>6       Q. The first sentence we talked about</p> <p>7 in paragraph eight, page 3 of Plaintiffs'</p> <p>8 Exhibit 115, what's the basis for the support</p> <p>9 for that statement, that "Users attach greater</p> <p>10 credibility to annual financial statements"?</p> <p>11 What's the empirical support for that?</p> <p>12       MR. BRAUTIGAM: Objection.</p> <p>13       A. Again, it's an axiom of the</p> <p>14 accounting and auditing literature that this</p> <p>15 is true. There probably are research papers</p> <p>16 that have been focused on that topic. None of</p> <p>17 them come to mind.</p> <p>18       You are asking questions about</p> <p>19 things that are such fundamental axioms that</p> <p>20 most researchers don't bother researching.</p> <p>21 Because it's part of -- it would be like</p> <p>22 asking in a course in Jewish law, you know,</p> <p>23 what are the Ten Commandments. Everybody</p> <p>24 knows what they are.</p> <p>25       Q. I can give you a cite for that if</p>	<p>Page 151</p> <p>1                   <b>FUERMAN</b></p> <p>2 with HTTP?</p> <p>3       MR. BRAUTIGAM: Second page of</p> <p>4 Exhibit A.</p> <p>5       MR. BURKE: I understand.</p> <p>6       Q. You are saying number three?</p> <p>7       A. Right.</p> <p>8       Q. The thing I'm looking at, it says</p> <p>9 the effective reform act and central bank on</p> <p>10 naming auditor defendants.</p> <p>11       MR. BRAUTIGAM: No, that's the</p> <p>12 fourth one.</p> <p>13       A. It could be we are both right. The</p> <p>14 resume may have changed from one date to the</p> <p>15 next. Maybe I got an additional article</p> <p>16 published.</p> <p>17       MR. BURKE: I think this is the one</p> <p>18 you marked.</p> <p>19       Q. Is your's correct, the one you are</p> <p>20 looking at correct?</p> <p>21       A. I think so. I'm publishing new</p> <p>22 articles all the time. The most recent</p> <p>23 publications are not reflected here.</p> <p>24       Q. Okay.</p> <p>25       A. Anyway, in the article that starts</p>

<p>1                   <b>FUERMAN</b></p> <p>2 off "The role of auditor culpability in naming</p> <p>3 auditor defendants," in there I show that the</p> <p>4 litigants, specifically the plaintiffs in</p> <p>5 private securities class actions, regard the</p> <p>6 restatement of audited -- previously issued</p> <p>7 audited financial statements completely</p> <p>8 differently than the restatement of previously</p> <p>9 issued unaudited quarterly financial</p> <p>10 statements in regard to naming the auditor</p> <p>11 defendant.</p> <p>12                  There's a very strong relationship</p> <p>13 naming the auditor defendant if it's audited</p> <p>14 annual financial statements. There's no</p> <p>15 relationship at all if it's just quarterlies.</p> <p>16 This is kind of intuitive, but I was the first</p> <p>17 one to show this among academic researchers.</p> <p>18                  Q. You believe that substantiates your</p> <p>19 statement here that corporation's financial</p> <p>20 reporting creates greater credibility to an</p> <p>21 audited annual statement than other</p> <p>22 statements; is that correct?</p> <p>23                  A. That's one. Another is there have</p> <p>24 been a bunch of -- as we talk here other</p> <p>25 papers come to mind. In the wake of the</p>	<p>Page 154</p> <p>1                   <b>FUERMAN</b></p> <p>2 to be trusted than unaudited quarterly</p> <p>3 financial statements.</p> <p>4                  Q. Can you point me, other than what</p> <p>5 you've told me about already, if this is so</p> <p>6 axiomatic, to any accounting literature,</p> <p>7 publication, article, treatises or anything</p> <p>8 that says that?</p> <p>9                  A. I can think of another one.</p> <p>10                 Q. Can you think of any authoritative</p> <p>11 treatises, standard, bulletin or anything else</p> <p>12 that says that?</p> <p>13                 A. In the words you use, no. But the</p> <p>14 concepts you are expressing are support for</p> <p>15 that notion that audited annual financials are</p> <p>16 more important to users of financial</p> <p>17 statements or more believable or more</p> <p>18 credible.</p> <p>19                 That's about as -- there are many</p> <p>20 articles that touch on that. The auditing</p> <p>21 textbook I use I'm almost positive, by</p> <p>22 William Messier, says that. The whole purpose</p> <p>23 of audits is to enhance the credibility of</p> <p>24 financial statements.</p> <p>25                 Q. The last sentence in paragraph eight</p>
<p>1                   <b>FUERMAN</b></p> <p>2 Arthur Anderson meltdown a number of</p> <p>3 researchers did studies that showed that in</p> <p>4 the aggregate companies that were audited by</p> <p>5 Arthur Anderson took a beating in the stock</p> <p>6 market, compared to companies that were</p> <p>7 audited by other members of the big four.</p> <p>8                  Because in the aggregate in</p> <p>9 investors felt that the audit of Anderson</p> <p>10 could not be trusted to enhance the</p> <p>11 credibility of those companies financial</p> <p>12 statements and those companies stocks, in turn</p> <p>13 compared to PricewaterhouseCoopers, KPMG,</p> <p>14 Ernst and Young, Deloitte and Tush.</p> <p>15                 Q. That deals with one auditing firm</p> <p>16 versus another?</p> <p>17                 A. One auditing firm whose</p> <p>18 representation for being a high quality</p> <p>19 auditor had been impugned, the other firm</p> <p>20 their reputation had not been impugned. That</p> <p>21 shows that it matters to the investment</p> <p>22 community the audit that's performed. It's</p> <p>23 not just parts is parts.</p> <p>24                 It matters a lot. By extension,</p> <p>25 audited annual financial statements are more</p>	<p>Page 155</p> <p>1                   <b>FUERMAN</b></p> <p>2 states that conversely an auditor who issues</p> <p>3 an unqualified audit opinion when the</p> <p>4 financial statements are immaterially</p> <p>5 misstated is in full compliance with auditing</p> <p>6 standards?</p> <p>7                  A. That is correct.</p> <p>8                 Q. What is immaterially misstated mean?</p> <p>9                 A. It would be a misstatement that is</p> <p>10 not regarded as material. The auditor is only</p> <p>11 responsible for providing reasonable assurance</p> <p>12 that financials are materially correct.</p> <p>13                 That's all. To do more would be an</p> <p>14 unreasonable expectation to make of the</p> <p>15 auditor.</p> <p>16                 Q. Is it your testimony that an auditor</p> <p>17 who issues an opinion when he knows the</p> <p>18 financial statements are misstated is in full</p> <p>19 compliance with auditing standards?</p> <p>20                 A. If he knows or she knows they are</p> <p>21 immaterially misstated he or she is in full</p> <p>22 compliance, however, I must clarify that. How</p> <p>23 this comes up in auditing is frequently</p> <p>24 auditors when they are auditing the books of a</p> <p>25 company, they find adjustments that</p>

<p style="text-align: right;">Page 158</p> <p>1           <b>FUERMAN</b></p> <p>2 potentially ought to be made to the accounts</p> <p>3 that underline the financial statements of the</p> <p>4 company, and the question is, should it</p> <p>5 require them to be made.</p> <p>6           The auditing standards say no, not</p> <p>7 unless they are material. The reason for this</p> <p>8 is because, one, the auditor should not</p> <p>9 attempt to go beyond assuring materially</p> <p>10 correct financial statements. And the other</p> <p>11 is the process of auditing is a spot check.</p> <p>12         The auditor, much of the work of the</p> <p>13 auditor is gathering relatively small samples</p> <p>14 of very large numbers of transactions and</p> <p>15 using inferential statistics to decide whether</p> <p>16 those accounts, those line items are correct</p> <p>17 or incorrect.</p> <p>18         It can quite conceivably occur that</p> <p>19 the auditor concludes from inferential</p> <p>20 statistics that they are misstated and be</p> <p>21 wrong, because I'm not sure -- am I speaking</p> <p>22 too abstractly? Inferential statistics, what</p> <p>23 that is, is when you don't look at the entire</p> <p>24 population, but you take a small sample and</p> <p>25 you estimate from that what the entire</p>	<p style="text-align: right;">Page 160</p> <p>1           <b>FUERMAN</b></p> <p>2           A. I've taught that to many students.</p> <p>3           Q. That's not my question. You've</p> <p>4 never done it?</p> <p>5           <b>MR. BRAUTIGAM: Objection.</b></p> <p>6           A. I've never performed a financial</p> <p>7 statement audit, that is correct.</p> <p>8           Q. Paragraph nine. I think we were</p> <p>9 talking in general about the proxy statement</p> <p>10 prospectus, dated September 27, 1999; is that</p> <p>11 correct?</p> <p>12         <b>MR. BRAUTIGAM: Actually I think</b></p> <p>13 it's dated September 24th.</p> <p>14          A. Where are we right now?</p> <p>15          Q. Second line of paragraph 7 of your</p> <p>16 report there. You refer to the proxy</p> <p>17 statement prospectus filed September 27, 1999?</p> <p>18          A. Yes.</p> <p>19          Q. Is that correct or is Mr. Brautigam</p> <p>20 right that it's September 24th?</p> <p>21          A. I could be wrong on that. Sometimes</p> <p>22 it's confusing. When you look at Lexus Nexus</p> <p>23 sometimes the date you think is the date you</p> <p>24 are looking at, the document date sometimes is</p> <p>25 the date filed with the SEC.</p>
<p style="text-align: right;">Page 159</p> <p>1           <b>FUERMAN</b></p> <p>2 population looks like.</p> <p>3           Gallop does that when it does polls</p> <p>4 to see how it predicts how people will vote in</p> <p>5 an election. The auditor does the same thing</p> <p>6 during an audit. That's the other reason why</p> <p>7 unless it really looks like the companies line</p> <p>8 item is materially misstated the auditor</p> <p>9 should not insist that an adjustment be made.</p> <p>10          Q. You have never personally been</p> <p>11 involved in that process that you just</p> <p>12 described, because you never participated in</p> <p>13 actual auditing of financial statements,</p> <p>14 correct?</p> <p>15          <b>MR. BRAUTIGAM: Objection.</b></p> <p>16          A. It is corrective, I've not</p> <p>17 participated in an audit. I've participated</p> <p>18 in teaching auditing students for the last ten</p> <p>19 years though.</p> <p>20          Q. But this whole analysis you just</p> <p>21 talked about of testing and inferential</p> <p>22 statistics and deciding whether the testing</p> <p>23 indicates something or doesn't indicate,</p> <p>24 you've never done that yourself, have you?</p> <p>25          <b>MR. BRAUTIGAM: Objection.</b></p>	<p style="text-align: right;">Page 161</p> <p>1           <b>FUERMAN</b></p> <p>2           Q. So Mr. Brautigam shouldn't of</p> <p>3 interrupted and corrected me; is that right?</p> <p>4 I'm being facetious. In any event, here in</p> <p>5 these paragraphs we're talking about the proxy</p> <p>6 statement for the OHSL Provident merger, are</p> <p>7 we not?</p> <p>8          A. Yes.</p> <p>9          Q. Paragraph nine states that "Thus</p> <p>10 with regard to financial reporting, the</p> <p>11 audited annual financial statements for the</p> <p>12 year December 1, 1998 (10K) were the most</p> <p>13 important financial statements for OHSL</p> <p>14 shareholders in evaluating the financial</p> <p>15 condition of prospects of PFGI, as they were</p> <p>16 the most recently audited financial statements</p> <p>17 available prior to their having to make a</p> <p>18 decision on the merger."</p> <p>19          A. Yes, I wrote that.</p> <p>20          Q. I think you indicated earlier you</p> <p>21 did not undertake any analysis of specific</p> <p>22 demographics of the OHSL shareholders, what</p> <p>23 individual shareholders found most important,</p> <p>24 least important or anything like that,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 162</p> <p>1                   <b>FUERMAN</b></p> <p>2       A. No, I did not call them up on the</p> <p>3       phone and ask them what they felt was most</p> <p>4       interesting or important.</p> <p>5       Q. So what's the basis for your</p> <p>6       statement as to what the OHSI shareholders</p> <p>7       found most important, as you stated in this</p> <p>8       paragraph?</p> <p>9       A. That the basis for my statements in</p> <p>10      the general axiom of the accounting and</p> <p>11      auditing literature, that audited annual</p> <p>12      financial statements are more important than</p> <p>13      quarterly unaudited financial statements.</p> <p>14      Interestingly, there was a proposal at one</p> <p>15      point many years ago that the SEC ought to</p> <p>16      require all financial statements to be</p> <p>17      audited.</p> <p>18      There was the recognition that then</p> <p>19      they would all be equally credible and</p> <p>20      trustworthy, but it was decided on cost</p> <p>21      benefit analysis basis not to require that.</p> <p>22      So because of that only the annual financial</p> <p>23      statements are audited. Logically the annual</p> <p>24      audited financial statements that are</p> <p>25      available to people, blessed ones, that are</p>	<p style="text-align: right;">Page 164</p> <p>1                   <b>FUERMAN</b></p> <p>2       shareholders, did you?</p> <p>3                    MR. BRAUTIGAM: Objection to the</p> <p>4                    form.</p> <p>5       A. I did study to prepare for this</p> <p>6       expert testimony, the fact pattern of the OHSI</p> <p>7       merger. From that fact pattern I determined</p> <p>8       that the two most important audited annual</p> <p>9       financial statements to consider, so far as</p> <p>10      materiality statements and the nexus between</p> <p>11      them, are year end 1998 and year end 1999.</p> <p>12      Q. Let me ask the question again. Did</p> <p>13      you undertake any study, any analysis, any</p> <p>14      survey of specifically what OHSI shareholders</p> <p>15      did or did not find important or did or did</p> <p>16      not rely upon?</p> <p>17                   MR. BRAUTIGAM: Objection.</p> <p>18      A. I did specific analysis to determine</p> <p>19      what was the date of the special -- what was</p> <p>20      the date of the proxy that was set out; what</p> <p>21      was the date of the shareholders meeting; what</p> <p>22      said what at the special shareholders meeting; what</p> <p>23      what were the issues that arose around the</p> <p>24      time of the shareholders meeting; what were</p> <p>25      the issues that arose between then and the</p>
<p style="text-align: right;">Page 163</p> <p>1                   <b>FUERMAN</b></p> <p>2       available to people are the most important.</p> <p>3       Q. As to what any individual group,</p> <p>4       subset of OHSI shareholders did or did not</p> <p>5       find important, did or did not rely upon, you</p> <p>6       don't know that specifically, do you?</p> <p>7                   MR. BRAUTIGAM: Objection.</p> <p>8       A. I do not know that specifically.</p> <p>9       Q. You are relying on the axiom you</p> <p>10      just described?</p> <p>11      A. I'm relying on the axiom that</p> <p>12      shareholders of any company are going to</p> <p>13      attach the greatest importance in some</p> <p>14      respects to the most recent audited annual</p> <p>15      financial statements.</p> <p>16      Q. That's independent of how they were</p> <p>17      treated in this particular transaction, right?</p> <p>18                   MR. BRAUTIGAM: Objection.</p> <p>19      Q. I guess what I'm driving at and I'm</p> <p>20      not trying to argue with you, you didn't</p> <p>21      undertake any analysis, any study, any polling</p> <p>22      or anything else that allows you to conclude,</p> <p>23      other than in general, based upon your general</p> <p>24      axioms, what specifically was relied upon, was</p> <p>25      important or anything else to the OHSI</p>	<p style="text-align: right;">Page 165</p> <p>1                   <b>FUERMAN</b></p> <p>2       closing of the merger on December 3, 1999.</p> <p>3                   I looked at all these things in</p> <p>4       determining what was most important for the</p> <p>5       OHSI shareholders to consider.</p> <p>6       Q. Okay. We'll keep going then. What</p> <p>7       OHSI shareholders did you ever talk to?</p> <p>8       A. I didn't talk to any OHSI</p> <p>9       shareholders.</p> <p>10      Q. You didn't read Mr. Thiemann's</p> <p>11      deposition, right?</p> <p>12                   MR. BRAUTIGAM: Objection.</p> <p>13      Q. Is that right?</p> <p>14                   MR. BRAUTIGAM: Objection.</p> <p>15      A. Yes. I have told you previously I</p> <p>16      did not read the depositions of the plaintiffs</p> <p>17      because I felt it would not be worth spending</p> <p>18      time on.</p> <p>19      Q. Did you poll any of the OHSI</p> <p>20      shareholders and conduct any kind of a study</p> <p>21      or analysis of what they looked at, what they</p> <p>22      read or what they relied upon?</p> <p>23                   MR. BRAUTIGAM: Objection.</p> <p>24      A. In my professional opinion it's not</p> <p>25      necessary.</p>

<p style="text-align: right;">Page 166</p> <p>1           <b>FUERMAN</b></p> <p>2       Q. Just a simple yes or no, either you</p> <p>3       did or you didn't?</p> <p>4       MR. BRAUTIGAM: Objection.</p> <p>5       Q. I'm not trying to do anything other</p> <p>6       than establish what you did.</p> <p>7       MR. BRAUTIGAM: Dr. Fuerman, you</p> <p>8       have the right to complete your answers.</p> <p>9       It's improper for him to interrupt, so</p> <p>10      proceed accordingly.</p> <p>11      Q. Did you conduct any such poll,</p> <p>12      sensus or any kind of a study of specifically</p> <p>13      what the OHSI shareholders did or did not find</p> <p>14      important and rely upon?</p> <p>15      MR. BRAUTIGAM: Objection.</p> <p>16      A. I did not conduct any poll because I</p> <p>17      did not believe that that was the proper mode</p> <p>18      of analysis on determining what financials are</p> <p>19      most important to these shareholders. Getting</p> <p>20      back, again, to the basic axiom that financial</p> <p>21      accounting is for the purpose of the meeting</p> <p>22      the needs of a diverse group of potential</p> <p>23      users of financial statements.</p> <p>24      They are not specially created for</p> <p>25      creditors versus equity holders versus trade</p>	<p style="text-align: right;">Page 168</p> <p>1           <b>FUERMAN</b></p> <p>2       you've described them or based upon specific</p> <p>3       investigation, specific analysis of specific</p> <p>4       OHSI shareholders?</p> <p>5       MR. BRAUTIGAM: Objection to form.</p> <p>6       A. The direct answer is neither. It's</p> <p>7       based on the axioms, the general postulants</p> <p>8       and principles and standards of accounting,</p> <p>9       plus specific investigation of the OHSI fact</p> <p>10      pattern. When was the proxy mailed out or</p> <p>11      issued? When was the special meeting of</p> <p>12      shareholders held? When was the merger</p> <p>13      closing?</p> <p>14      Q. Where is that investigation? I</p> <p>15      mean, did you have a document that details</p> <p>16      that investigation that you conducted?</p> <p>17      MR. BRAUTIGAM: Objection.</p> <p>18      A. It's reflected in this report. It</p> <p>19      is not committed to writing.</p> <p>20      Q. So the investigation you just talked</p> <p>21      about is not written down anywhere?</p> <p>22      A. It's written into this report. The</p> <p>23      way I do my reports is I write them and I</p> <p>24      think about them and then I do further</p> <p>25      research. It might be looking at things in</p>
<p style="text-align: right;">Page 167</p> <p>1           <b>FUERMAN</b></p> <p>2       creditors. They are general purpose for</p> <p>3       everybody external to the corporation. And on</p> <p>4       that basis I conclude that those are the two</p> <p>5       most important audited annual financials to</p> <p>6       consider in determining materiality.</p> <p>7       Q. I'm not disagreeing with you. All I</p> <p>8       want to do is establish whether that is based</p> <p>9       upon your axioms as you've described them or</p> <p>10      based upon any specific investigation and</p> <p>11      specific analysis of specific OHSI</p> <p>12      shareholders?</p> <p>13      MR. BRAUTIGAM: Objection. It's not</p> <p>14      a question, it's a speech. This is asked</p> <p>15      and answered. You are harassing the</p> <p>16      witness.</p> <p>17      Q. Go a head.</p> <p>18      MR. BRAUTIGAM: Wait for a question.</p> <p>19      MR. BURKE: You can read it back.</p> <p>20      MR. BRAUTIGAM: She can read it</p> <p>21      back, but it won't reflect the question.</p> <p>22      MR. BURKE: I'll restate it.</p> <p>23      Q. Professor Fuerman, I understand what</p> <p>24      you've just said. My question is, are those</p> <p>25      conclusions based upon your general axioms as</p>	<p style="text-align: right;">Page 169</p> <p>1           <b>FUERMAN</b></p> <p>2       various financial statements, reading through</p> <p>3       deposition transcripts and then I go and I</p> <p>4       revise the report. So that's where the</p> <p>5       research gets reflected. There's not a</p> <p>6       separate investigative report.</p> <p>7       Q. Page 4 of your report. This is</p> <p>8       still in paragraph nine. The first full</p> <p>9       sentence on that sentence says "However, the</p> <p>10      unaudited quarterly financial statements for</p> <p>11      the quarters ended March 31, 1999 and June 30,</p> <p>12      1999. The 10Qs also were very important, as</p> <p>13      they were the most recent financial statements</p> <p>14      available, prior to their having to make a</p> <p>15      decision on the merger at or before the</p> <p>16      October 25, 1999 special meeting of OHSI</p> <p>17      stockholders."</p> <p>18      A. Correct, I did write that.</p> <p>19      Q. As you sit here today, do you know</p> <p>20      specifically how the March 31, 1999 and the</p> <p>21      June 30, 1999 PFGI annual financial statements</p> <p>22      individually were impacted as a result of the</p> <p>23      statement?</p> <p>24      MR. BRAUTIGAM: Objection.</p> <p>25      A. I do not know that, but that's not</p>

<p style="text-align: right;">Page 170</p> <p>1                   <b>FUERMAN</b></p> <p>2 what I said in this sentence, in this</p> <p>3 paragraph. I said that these are the</p> <p>4 quarterly financials that are most logically,</p> <p>5 very important because they are very recent in</p> <p>6 time, prior to the October 25, 1999 special</p> <p>7 meeting of OHSL shareholders.</p> <p>8                   Q. But that's not my question, my</p> <p>9 question is the one I asked you. Do you know</p> <p>10 specifically how the March 31, 1999 and the</p> <p>11 June 30, 1999 interim periodic financial</p> <p>12 statements were impacted by the restatements?</p> <p>13                   <b>MR. BRAUTIGAM:</b> Objection.</p> <p>14                   A. No, I do not. I did read a</p> <p>15 deposition transcript where counsel for</p> <p>16 plaintiffs requested that information from one</p> <p>17 of the defendants and the implication was it</p> <p>18 was not going to be provided to the</p> <p>19 plaintiffs.</p> <p>20                   Q. Was not going to be provided or</p> <p>21 couldn't be provided?</p> <p>22                   A. Well, it was said that it couldn't</p> <p>23 be provided. But the plaintiffs have no way</p> <p>24 of knowing whether it could or could not be</p> <p>25 provided. All the plaintiffs know is that it</p>	<p style="text-align: right;">Page 172</p> <p>1                   <b>FUERMAN</b></p> <p>2 important as the merger closing occurred</p> <p>3 December 3, 1999." Do you see that?</p> <p>4                   A. I see that.</p> <p>5                   Q. Again, you are referring to the PFGI</p> <p>6 10Q, right?</p> <p>7                   A. That's true.</p> <p>8                   Q. OHSL shareholders never would have</p> <p>9 gotten 10Qs for PFGI for a date after the</p> <p>10 proxy statement, would they?</p> <p>11                   <b>MR. BRAUTIGAM:</b> Objection.</p> <p>12                   A. That is correct.</p> <p>13                   Q. How were they supposed to figure</p> <p>14 that out?</p> <p>15                   A. In doing the analysis of the</p> <p>16 restatement impact it's necessary to use the</p> <p>17 subsequently issued 1999 10K as a rough</p> <p>18 approximation of how much restated those</p> <p>19 quarters ended March 31, '99 and June 30, '99</p> <p>20 and September 30, '99, how badly they were</p> <p>21 restated. That's our only way to gain some</p> <p>22 approximation as to how badly they were</p> <p>23 restated.</p> <p>24                   Q. You don't know how restatement</p> <p>25 affected any of those interim quarterly</p>
<p style="text-align: right;">Page 171</p> <p>1                   <b>FUERMAN</b></p> <p>2 was not provided and, therefore, I cannot base</p> <p>3 my analysis of the restatement impact</p> <p>4 comparing reported, originally reported versus</p> <p>5 restated quarters because it wasn't the</p> <p>6 quarters that were restated back then, it was</p> <p>7 just the years.</p> <p>8                   Q. As it relates to 1999 the only</p> <p>9 information in the proxy statement were</p> <p>10 quarterly data, were they not?</p> <p>11                   A. There was an incorporation by</p> <p>12 reference of the annual financial statements,</p> <p>13 the most recent 10K.</p> <p>14                   Q. For 1998?</p> <p>15                   A. That is correct.</p> <p>16                   Q. So if I'm correct, the 1999 numbers</p> <p>17 the only 1999 numbers included in the proxy</p> <p>18 statement were quarterly numbers, were they</p> <p>19 not?</p> <p>20                   A. Those are the only numbers included</p> <p>21 in the proxy statement.</p> <p>22                   Q. The next sentence states, "Also the</p> <p>23 unaudited quarterly financial statements for</p> <p>24 the quarter ended September 30, 1999 contended</p> <p>25 the 10Q, filed November 15, 1999 were very</p>	<p style="text-align: right;">Page 173</p> <p>1                   <b>FUERMAN</b></p> <p>2 statements, do you?</p> <p>3                   A. I know roughly, logically they would</p> <p>4 have been restated in roughly the same</p> <p>5 percentage as the 10K for years end 12/31/99.</p> <p>6                   Q. You know that or you assume that?</p> <p>7                   A. I think that's the only assumption</p> <p>8 under the circumstances that any reasonable</p> <p>9 expert could make, when that's the best</p> <p>10 available information that I can use to do my</p> <p>11 extrapolation.</p> <p>12                   Q. You don't know how the auto lease</p> <p>13 securitizations were booked, when they were</p> <p>14 booked, how they were closed or how they were</p> <p>15 reflected on Provident's accounting system, do</p> <p>16 you?</p> <p>17                   <b>MR. BRAUTIGAM:</b> Objection.</p> <p>18                   A. I know roughly how it worked.</p> <p>19                   Q. Tell me roughly how it worked as you</p> <p>20 understand it?</p> <p>21                   <b>MR. BRAUTIGAM:</b> Objection.</p> <p>22                   A. Periodically estimates were made for</p> <p>23 purposes of determining how much revenue, how</p> <p>24 much expense, how much loss, how much gain</p> <p>25 ought to be for every period, and sometime</p>

<p>1                   <b>FUERMAN</b></p> <p>2 before the end of each period there would be  3 accruals made. Because the nature of the  4 lease accounting was not simple cash leases,  5 but sale leaseback of operating lease, at one  6 point and then later direct financing leases.</p> <p>7       Q. My question wasn't clear and I  8 apologize. In any particular year, 1999, for  9 example, do you know with any specificity how  10 and when the leasebacks were closed, booked,  11 when they were on the books, when they were  12 off the books, when they were reflected on the  13 books as auto leases or anything like that in  14 terms of timing within 1999?</p> <p>15       MR. BRAUTIGAM: Objection.</p> <p>16       A. I do not know that because that  17 information has not been disclosed to the  18 plaintiffs.</p> <p>19       Q. Let me stop you right there.</p> <p>20       A. I can change my analysis.</p> <p>21       Q. Are you aware there's been testimony  22 in this case that deals with when those  23 securitizations were, in fact, closed?</p> <p>24       A. I've read the transcripts. I know  25 it's been said some of the accruals were made</p>	<p>Page 174</p>	<p>1                   <b>FUERMAN</b></p> <p>2 dated November 15, 1999, did not even come out  3 until couple months after the proxy statement,  4 at about two or three weeks after the annual  5 shareholders meeting, correct?</p> <p>6       A. That is correct.</p> <p>7       MR. BRAUTIGAM: Objection. I think  8 you meant special shareholder meeting.</p> <p>9       MR. BURKE: Whatever.</p> <p>10       Q. Special shareholder meeting?</p> <p>11       A. That is correct.</p> <p>12       Q. So that could not have been  13 disclosed to PFGI or to OHSL shareholders  14 either in the proxy statement or the special  15 shareholders meeting, correct?</p> <p>16       A. That is correct, however, it could  17 have been disclosed prior to the merger  18 closing on December 3, 1999.</p> <p>19       Q. You said "Had OHSL shareholders  20 known prior to December 3, 1999 that the  21 financial statements for the quarter ending  22 September 30, 1999 were materially misstated  23 then the December 3, 1999 closing would not  24 have occurred," okay?</p> <p>25       A. Right.</p>	<p>Page 176</p>
<p>1                   <b>FUERMAN</b></p> <p>2 at yearend, but it's not been stated with any  3 specificity how much when, which. I have not  4 seen that, any detail anywhere in the  5 deposition transcripts by any of the Provident  6 executives.</p> <p>7       Q. So as you sit here today you don't  8 have any specificity and you don't have any  9 ability to opine as to what particular  10 quarters would or would not have been affected  11 by the restatement or in what amounts as it  12 relates to 1999, correct?</p> <p>13       MR. BRAUTIGAM: Objection.</p> <p>14       A. You've asked two questions,  15 specificity and ability. Let me answer the  16 first question. Do I have all the specificity  17 I would like to have to make my analysis, no,  18 I do not.</p> <p>19       Do I have any ability to make an  20 analysis, yes, I do. We do this all the time.  21 In academe, academic research and Provident  22 itself made estimates of how its leases were  23 going to work out.</p> <p>24       Q. Let's get back to the paragraph we  25 were talking about before. The Provident 10Q,</p>	<p>Page 175</p>	<p>1                   <b>FUERMAN</b></p> <p>2 Q. First of all, what is the basis for  3 your statement that the September 30, 1999  4 financial statements were materially  5 misstated? What's your empirical evidence on  6 that?</p> <p>7       MR. BRAUTIGAM: Objection.</p> <p>8       A. My empirical evidence is that the  9 12/31/99 10K was materially misstated and the  10 12/31/98 10K was materially misstated. For  11 the in between quarters to not be materially  12 misstated would be mathematically impossible.</p> <p>13       Q. But you have not calculated the  14 precise misstatement in any of those in  15 between quarters, have you?</p> <p>16       A. I have not because the information  17 to enable me to do that has not been provided  18 to plaintiffs.</p> <p>19       Q. The next statement reads, "Either  20 OHSL and PFGI would have mutually agreed under  21 the circumstances not to close or an  22 injunction would have prevented the closing."</p> <p>23       Do you see that?</p> <p>24       A. Yes, I do.</p> <p>25       Q. I think you told me previously that</p>	<p>Page 177</p>

<p style="text-align: right;">Page 178</p> <p>1           <b>FUERMAN</b></p> <p>2 you never participated in a merger transaction</p> <p>3 on behalf of the acquiring company or the</p> <p>4 acquired company?</p> <p>5           A. That is correct.</p> <p>6           Q. What's the basis for your statement</p> <p>7 that if this were the case as you described it</p> <p>8 here these parties would not have closed?</p> <p>9           A. Well, I've just noticed this in my</p> <p>10 thousands of securities litigations in my</p> <p>11 database, that whenever there's an upsetting</p> <p>12 event and a restatement close before a merger</p> <p>13 closing of the acquiring corporation would</p> <p>14 certainly qualify as an upsetting event.</p> <p>15           That causes the deal to be scuttled</p> <p>16 or renegotiated because it's just not any</p> <p>17 longer -- it's no longer the deal that the</p> <p>18 people who previously had agreed to had agreed</p> <p>19 to. The deal has changed.</p> <p>20           Q. Specifically what transactions are</p> <p>21 you talking about?</p> <p>22           A. Well, in general if there's a change</p> <p>23 to the financials for the worse that's going</p> <p>24 to have a negative impact on the stock price</p> <p>25 and this is a stock-for-stock transaction.</p>	<p style="text-align: right;">Page 180</p> <p>1           <b>FUERMAN</b></p> <p>2 specifics to support that statement.</p> <p>3           <b>MR. BRAUTIGAM:</b> I object to all of</p> <p>4 those questions.</p> <p>5           A. I'm not afraid to give you a site.</p> <p>6 You can look at Bernstein and Wild Financial</p> <p>7 Statement Analysis. The most important thing</p> <p>8 with respect to financial statement analysis,</p> <p>9 with regard to these well-regarded authors,</p> <p>10 this book is in their fifth edition, is</p> <p>11 earnings per share. If suddenly the earnings</p> <p>12 per share of the acquiring corporation takes a</p> <p>13 nose difficult in a stock-for-stock</p> <p>14 transaction, the shareholders of the target</p> <p>15 corporation would have to be retarded not to</p> <p>16 demand an injunction and demand a</p> <p>17 renegotiation for a higher, better price.</p> <p>18           Q. Can you give me an example of a</p> <p>19 merger transaction where that occurred? Give</p> <p>20 me one. You got one? Did you assemble any</p> <p>21 data like that for this case?</p> <p>22           <b>MR. BRAUTIGAM:</b> Objection, compound,</p> <p>23 argumentative, badgering the witness.</p> <p>24           Q. Let me rephrase. Can you give me a</p> <p>25 single example of that occurring in a merger</p>
<p style="text-align: right;">Page 179</p> <p>1           <b>FUERMAN</b></p> <p>2 Were the information disclosed then the deal</p> <p>3 would need to have been renegotiated to</p> <p>4 reflect the lower amount of stock, the lower</p> <p>5 amount of consideration that the OHSL</p> <p>6 shareholders would get unless the deal were</p> <p>7 renegotiated.</p> <p>8           Because suddenly they are being paid</p> <p>9 in much less valuable stock than they had</p> <p>10 agreed to at the special meeting of October</p> <p>11 25, 1999.</p> <p>12           Q. I understand that subjectively you</p> <p>13 believe that. My question is, what specific</p> <p>14 studies or analysis or situations can you</p> <p>15 point me to where that happened?</p> <p>16           A. Is your question whether -- are you</p> <p>17 questioning whether the shareholders care what</p> <p>18 the financials look like in deciding to tender</p> <p>19 their shares to purchaser corporation?</p> <p>20           Q. It's real simple. What definitive</p> <p>21 data support do you have for the statement</p> <p>22 that "Under these circumstances OHSL and PFGI</p> <p>23 would have mutually agreed under the</p> <p>24 circumstances not to close"? When did you see</p> <p>25 that? When did you study it? Give me</p>	<p style="text-align: right;">Page 181</p> <p>1           <b>FUERMAN</b></p> <p>2 transaction, what you've just described?</p> <p>3           A. In my research I follow much, much,</p> <p>4 much more closely the cases that allege</p> <p>5 securities fraud in fraud on the market than I</p> <p>6 do the cases that involve mergers and</p> <p>7 acquisitions. A lot of those cases I don't</p> <p>8 follow as closely.</p> <p>9           But in my research over ten years I</p> <p>10 have never seen a single case, and I read</p> <p>11 securities class action alert every single</p> <p>12 week when it was publishing monthly and since</p> <p>13 then I follow all the cases that come out with</p> <p>14 institutional shareholders securities class</p> <p>15 action tracking, I've never seen a single case</p> <p>16 where there was a major upsetting corporate</p> <p>17 event of the acquiring corporation, whether</p> <p>18 it's restatement of financials of the</p> <p>19 acquiring corporation or death of the CEO of</p> <p>20 the acquiring corporation or any major</p> <p>21 upsetting event where the deal went through as</p> <p>22 it was originally scheduled, negotiated to go</p> <p>23 through.</p> <p>24           The target corporation would, the</p> <p>25 shareholders would put up a very major fight</p>

<p>1                    FUERMAN  2 to prevent that.  3            Q. For instance, can you give me -- if  4 you can't that's fine, I'm just asking for a  5 specific instance?  6            A. I cannot remember a single case  7 where an upsetting major corporate event  8 occurred like that and the transaction went  9 through just the way it had been voted on two  10 months earlier.  11          Q. Give me an example when it didn't go  12 through?  13          A. I cannot do that.  14          Q. Thank you. The next half of the  15 sentence talks about under these circumstances  16 an injunction would have prevented the  17 closing. Do you see that?  18          MR. BRAUTIGAM: Objection. You  19 misread that.  20          Q. It says "Either OHSL and PFGI would  21 have agreed mutually under the circumstances  22 not to close, or an injunction would have  23 prevented the closing." Did I read that  24 correctly?  25          MR. BRAUTIGAM: The second time,</p>	Page 182	<p>1                    FUERMAN  2            A. That is correct.  3            Q. You then cite to a footnote that  4 says, "When analyzing the question of Federal  5 Law one must rely, to the extent possible, on  6 the relevant federal statute, the U.S.  7 Constitution and the decision of the U.S.  8 Supreme Court."  9            A. That is correct.  10          Q. What's the basis for that being the  11 way federal practitioners analyze questions of  12 federal law?  13          A. Just the general layman's  14 understanding of the most important things are  15 the onpoint Federal Statute, the U.S.  16 Constitution and the decisions of the U.S.  17 Supreme Court, and you cannot start by  18 ignoring those and looking to other things.  19          You may well find that there is  20 nothing whatsoever onpoint so far as the  21 Federal Statute, the U.S. Constitution, the  22 decisions of the U.S. Supreme Court. But at  23 least you have a hierarchy of things that are  24 regarded as most authoritative, that you look  25 at first in the law, and you have a similar</p>
<p>1                    FUERMAN  2 yes.  3            Q. Have you ever been involved in an  4 injunction proceeding in connection with a  5 merger transaction?  6            A. No, but I've read a lot about them.  7 As I indicated by reading securities class  8 action alert and securities class action  9 tracking and all the cases that get filed.  10          Q. How many times do you recall of an  11 injunction preventing the closing of a merger  12 transaction?  13          A. What percent of the time? That's  14 hard to say whether it's 10 percent, 20  15 percent of the time. My best estimate is that  16 it's a minority of the cases where an  17 injunction prevents the closing from going  18 through.  19          Q. Did you compile any kind of a study  20 of how many times in a circumstances like this  21 an injunction was issued to prevent a closing?  22          A. No, I did not.  23          Q. Let's turn to paragraph ten. You  24 referred to a statement of auditing standards  25 or SAS number 69?</p>	Page 183	<p>1                    FUERMAN  2 hierarchy in accounting and auditing.  3            Q. You may have answered my question.  4 You indicated this is sort of a layman's view  5 of things, is that what this is intended to?  6            A. Right, I'm not opining on the way a  7 legal brief should be written.  8            Q. You will agree with me that  9 decisions of Circuit Courts of Appeals also  10 tend to be authoritative within the areas  11 affected by that?  12          A. Oh, highly authoritative.  13          Q. The next page you talk about APB or  14 Accounting Principles Board, Opinion  15 Number 20.  16          A. That's right.  17          Q. I think you indicate, in the middle  18 of that page, of the GAAP hierarchy, G-A-A-P  19 hierarchy as you've described it, the only  20 pronouncement that is onpoint with the issues  21 relevant to your opinion is APB 20; is that  22 correct?  23          A. That is correct.  24          MR. BURKE: We're up to the  25 negligence exhibit here.</p>

<p>1                   <b>FUERMAN</b></p> <p>2                   (Fuerman Exhibit 6, document, marked</p> <p>3                   for identification, as of this date.)</p> <p>4                   Q. Take a look at that and see if you</p> <p>5                   can identify that as being a copy of APB 20.</p> <p>6                   A. It is. It's a lot easier to read.</p> <p>7                   The particular website you got this from, it</p> <p>8                   came out in a pretty tough format to follow.</p> <p>9                   I have my own copy of APB 20 that I'd like to</p> <p>10                  look at.</p> <p>11                  Q. If you'd like to refer to yours</p> <p>12                  that's fine. I would like to make sure when</p> <p>13                  you are referring to APB 20 I've got the right</p> <p>14                  document.</p> <p>15                  MR. BRAUTIGAM: Would you like to</p> <p>16                  copy that?</p> <p>17                  MR. BURKE: No.</p> <p>18                  Q. If you want to make that part of the</p> <p>19                  record we can identify yours as APB 20 and</p> <p>20                  I'll just follow along with this.</p> <p>21                  A. Okay.</p> <p>22                  Q. So this does appear to be APB 20?</p> <p>23                  A. That is correct.</p> <p>24                  Q. Page 5 of your report, paragraph 11,</p> <p>25                  you begin to describe APB 20; is that correct?</p>	<p>Page 186</p>	<p>1                   <b>FUERMAN</b></p> <p>2                   MR. BRAUTIGAM: That's different</p> <p>3                   from ever.</p> <p>4                   A. I'm just guesstimating. I'd say</p> <p>5                   there's maybe a 30 or 40 percent chance one of</p> <p>6                   them was. I didn't work in a lot of publicly</p> <p>7                   held companies.</p> <p>8                   I'm trying to remember other than</p> <p>9                   Cardinal Industries, Inc., who did I work for</p> <p>10                  that was a publicly held company. Yeah, that</p> <p>11                  would be it. I don't think during the couple</p> <p>12                  years I was there -- actually during the time</p> <p>13                  I was there I think they only issued one</p> <p>14                  financial statement and then they were going</p> <p>15                  downhill so badly they couldn't issue the</p> <p>16                  next. So the answer is no.</p> <p>17                  Q. The last full sentence of section</p> <p>18                  eleven there, "Users of financial statements</p> <p>19                  value consistency because consistency makes it</p> <p>20                  easier to determine whether the company is</p> <p>21                  improving or deteriorating with regard to its</p> <p>22                  performance."</p> <p>23                  A. Yes.</p> <p>24                  Q. What's the basis for that?</p> <p>25                  A. That's a summarization of what you</p>	<p>Page 188</p>
<p>1                   <b>FUERMAN</b></p> <p>2                  A. That is correct.</p> <p>3                  Q. The second sentence there states,</p> <p>4                  " Ideally there should be no accounting changes</p> <p>5                  from one year to the next because accounting</p> <p>6                  changes impair consistency."</p> <p>7                  A. Changes is used as a noun in that</p> <p>8                  sentence, that's why it's confusing.</p> <p>9                  Q. When you worked, and we know you</p> <p>10                 have not been involved in public accounting,</p> <p>11                 but when you worked at the various corporate</p> <p>12                 positions you described, were your employers</p> <p>13                 the companies for whom you worked ever</p> <p>14                 involved with accounting changes?</p> <p>15                  A. They may well have been. APB Option</p> <p>16                 Number 20 covers a broad range of accounting</p> <p>17                 changes, including a number that are not</p> <p>18                 "restatements" of the sort that is thought of</p> <p>19                 as "restatements" in the financial press.</p> <p>20                  Q. Do you know from your own first-hand</p> <p>21                 knowledge whether any of those companies were</p> <p>22                 involved with accounting changes or issues</p> <p>23                 under APB 20?</p> <p>24                  MR. BRAUTIGAM: Ever?</p> <p>25                  MR. BURKE: When he was there.</p>	<p>Page 187</p>	<p>1                   <b>FUERMAN</b></p> <p>2                   find in APB 20 and a number of other places in</p> <p>3                   the accounting literature.</p> <p>4                  Q. If you can, point me to where that</p> <p>5                  appears in APB 20.</p> <p>6                  A. If you look at paragraph 14 of APB</p> <p>7                 20, it says in subparagraph A, "Accounting</p> <p>8                 principles should be applied consistently for</p> <p>9                 all periods presented in comparative financial</p> <p>10                 statements. Using difficult accounting</p> <p>11                 principles for similar items in financial</p> <p>12                 statements presented for various periods may</p> <p>13                 result in misinterpretations of earnings</p> <p>14                 trends."</p> <p>15                  So and it continues with similar</p> <p>16                 kinds of sentiments in the next couple of</p> <p>17                 subparagraphs or even next three</p> <p>18                 subparagraphs. The idea is that there's a</p> <p>19                 conflict between two fundamental goals of</p> <p>20                 financial accounting. We would like the</p> <p>21                 accounting policy, the accounting treatment,</p> <p>22                 to be identical year after year after year.</p> <p>23                  That way a user of the financial</p> <p>24                 statements can look and see what earnings</p> <p>25                 per share are really getting better or getting</p>	<p>Page 189</p>

<p>1                   <b>FUERMAN</b></p> <p>2 worse and to what extent. If you have 3 restatements then it confuses the issue of how 4 things are proceeding over time. But that 5 conflicts with the goal in financial 6 accounting of, maybe not artfully stating 7 this, but let's account for things correctly.</p> <p>8                   If you discover at some point in the 9 past they were not accounted for correctly 10 maybe we ought to think about restating them. 11 So the general -- that general conflict 12 between the two goals, consistency versus 13 let's get it right, is resolved in APB 20 by 14 saying that in some situations we will 15 restate, but in others we will not, and then 16 they specifically go on.</p> <p>17                   Am I talking too long?</p> <p>18                   Q. You've answered the question. You 19 definitely answered the question and you will 20 find out, as Mr. Brautigam can tell you, 21 sometimes if you answer the question and wait 22 for the next one we'll get through this 23 quicker. You answered my question. I 24 appreciate your help.</p> <p>25                   Paragraph number 12 of your report,</p>	<p>Page 190</p>	<p>1                   <b>FUERMAN</b></p> <p>2 net income of the period of the change."</p> <p>3                   That would be an example of current 4 treatment which causes the change to have an 5 impact or causes what happened in previous 6 years to have an impact only on the current 7 year's retained earnings. So current 8 treatment there's no impact on prior year's 9 income statements.</p> <p>10                   Q. Am I correct that the language that 11 appears in the first bullet point of paragraph 12 12 of your report is your summarization of APB 13 20, as opposed to language that appears in APB 14 20 verbatim?</p> <p>15                   A. I can't say that. This is a pretty 16 long -- if I had enough time to spend this 17 afternoon digging through here I might find 18 those exact words and phrases.</p> <p>19                   Q. The bullet points do not have 20 citations to specific sections of APB 20?</p> <p>21                   A. No, they don't. If it's important 22 for the case for me to dig up specifics 23 citations I could do that, I believe.</p> <p>24                   Q. I'm just trying to make sure I 25 understand what in here is your view, as</p>	<p>Page 192</p>
<p>1                   <b>FUERMAN</b></p> <p>2 Plaintiffs' Exhibit 115. There you talk about 3 three methods to disclose accounting changes?</p> <p>4                   A. Right.</p> <p>5                   Q. The first bullet point refers to 6 current treatment of an accounting change?</p> <p>7                   A. That is correct.</p> <p>8                   Q. Now, this refers to APB paragraph 9 38; is that correct? No, I'm sorry. Tell me 10 where these three methods of treatment are 11 addressed in APB 20?</p> <p>12                   A. Let's see. They are not all talked 13 about in one place in APB 20. You have to 14 pick and pull them out of different places.</p> <p>15                   Q. Let's look at the first bullet 16 point. It talks about current treatment of 17 accounting changes. Where does that come 18 from?</p> <p>19                   A. An example of the first bullet would 20 be paragraph 18 -- no, excuse me, paragraph 21 19, subparagraph B. Where it says, "The 22 cumulative effect of changing to a new 23 accounting principle on the amount of retained 24 earnings at the beginning of the period in 25 which the change is made should be included in</p>	<p>Page 191</p>	<p>1                   <b>FUERMAN</b></p> <p>2 opposed to what literally is in the verbiage 3 of APB 20. The second bullet point deals with 4 perspective treatment of accounting changes?</p> <p>5                   A. Right. These are changes that are 6 not regarded as terribly important by 7 APB No. 20 and what happened in prior years is 8 ignored. The fact that in prior years this 9 new, different accounting policy is being 10 applied, we're just going to ignore the fact 11 that it was a different accounting policy, a 12 different kind of estimation or computation 13 than in prior years, we're just going to 14 ignore that.</p> <p>15                   Q. Can you give me an example in APB 20 16 of that, in one of the sections?</p> <p>17                   A. Let's see if I can find that.</p> <p>18                   Sometimes there are specific new FASBs that 19 are issued where they direct the companies to 20 just use prospective treatment, to just in 21 future financial statements use this new 22 accounting policy, this new way of estimating 23 and calculating. I can't find it at this 24 point.</p> <p>25                   Q. The third bullet point in</p>	<p>Page 193</p>